UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 15 Cr. 643 (PKC)

GARY HIRST,

Defendant.

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September 22, 2016
10:00 a.m.

Before:

HON. P. KEVIN CASTEL

District Judge
and a Jury

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
BY: BRIAN R. BLAIS
AIMEE HECTOR
REBECCA G. MERMELSTEIN
Assistant United States Attorneys

SHER TREMONTE LLP
Attorneys for Defendant
BY: MICHAEL TREMONTE
JUSTINE A. HARRIS
NOAM KORATI BIALE

ALSO PRESENT:
SPECIAL AGENT SHANNON BIENIEK, FBI
ELLIE SHEINWALD, Paralegal
GARY SMITH, Paralegal
RYAN POLLOCK, Paralegal

(Trial resumed; jury not present)

THE COURT: I have considered the arguments with regard to the issue of the government calling Shant Chalian and I'm now prepared to rule.

Prior to trial, the government produced 3500 material for Mr. Chalian, an attorney who previously represented Gerova while at the law firm of Hodgson Russ. On September 9th, the government indicated that it no longer intended to call Mr. Chalian, and on September 19th, during trial, the government indicated that it did want to call Mr. Chalian, and extensive argument has ensued.

At bottom, the purpose of the government's examination is to rebut the statement made by the defendant to Michael Hlavsa in a Skype chat, GX600B. "I just sent you the calculation spreadsheet from Shant," and that calculation spreadsheet referred to, the government believes, is Government's Exhibit 601. The government's theory is that the calculations did not originate with Chalian but originated with a member of the conspiracy or a person acting under the direction of a member of the conspiracy.

The government has, at my request, described the proposed examination of Chalian. This is in the trial transcript at pages 1105 to 1106. The examination focuses on the period of May 21 through May 27th, May 21st being the date of the exercise notice with respect to warranties, through

May 27th, the date the shares were, in fact, issued. The two inquiries of Mr. Chalian are, "Did you see the calculations in Government's Exhibit 601? Did you work on any calculations regarding shares to be received by Mr. Shahini?" That's the gist of it.

Defense counsel helpfully outlined areas of likely cross, and they are set out in the transcript between pages 1106 and 1111, as supplemented by further statements by counsel at the close of yesterday's session.

The government has represented that it has produced all 3500 material relating to Chalian, all Rule 16 material, all Brady, and all Giglio material in its possession or control, and there does not seem to be any present dispute about that circumstance.

Allowing the government to call Chalian is likely a discretionary act. It produced the 3500 material for him, thereby indicating they were going to call him as a witness, and undoubtedly said they were going to call him as a witness, only to then renounce that intention. The stated need for Chalian's testimony was apparent from the face of the government's own exhibits, 601 and 600B, and the Court has considered potential prejudice to the defendant.

The defendant relies principally on a subpoena it served on the law firm of Hodgson Russ on June 16th and claims that it was lulled into inaction by the government's

September 9th decision not to call him. Had the government not done so, the defendant maintains, the defendant might have obtained a trove of impeachment materials and indeed materials that might be useful to the defendant as relevant, admissible evidence.

These claims are not supported by the subpoena, the actions of the defendant in pursuing the subpoena, and the positions taken by the law firm that was the subject of the subpoena. It also misapprehends the function of a Rule 17C subpoena.

Further, it conflates the government's request to call Chalian as a witness with the defendant's own ability to call Chalian as a witness. It ignores the limitation that cross of Chalian as a government witness is limited to the scope of the direct testimony and any proper impeachment.

I begin with Rule 17C. "To constitute a valid subpoena under Rule 17C, a party must clear three hurdles; one, relevancy, two, admissibility, three, specificity." See United States against Nixon, 418 U.S. 683 at 700.

As the Court said in that case, generally, the need for evidence to impeach witnesses is insufficient to require its production in advance of trial. And courts have held that a Rule 17C subpoena is not properly used to acquire documents from a nonparty solely for their use in impeachment. See, for example, United States against Cherry, 876 F. Supp. 547 at 552, 553 where Judge Haight said, "Courts have consistently interpreted the admissibility standard of Rule 17C to preclude production of materials whose evidentiary use is limited to impeachment." Of course, in theory, a document could be relevant and admissible and specifically identified, and it could be used as both evidence and impeachment material, but a Rule 17C subpoena may not seek material solely for impeachment.

Now, looking at the face of the subpoena that was served here on June 16th, 2016, it was a blunderbuss subpoena. Paragraph 1 sought "all documents and communications sent to or from Hodgson Russ email account corresponding to the email address of Stephen Weiss between January 1st, 2009 and the present, including, but not limited to, all email attachments," and Category 2 called for "all documents and communications relating to Gary Hirst." That subpoena failed the relevancy ground, the admissibility ground, and the specificity ground.

On June 27th, Hodgson Russ informed the plaintiff that just the category on emails involving Stephen Weiss from January 1st, 2009 to the present, and he left the firm in 2012, they indicated that that would cover 78,000 responsive documents. And with regard to documents involving Gary Hirst, that would cover 16,000 documents. Notably, they didn't say they didn't have responsive documents, they said they have responsive documents, the subpoena was overbroad.

After discussions regarding the scope of the subpoena, on August 8th, the law firm wrote to counsel for the defendant and said, in part, "As you have not provided any basis for this firm to consider the subpoena to have been validly issued and because the subpoena is overbroad and calls for documents that are privileged, the firm will treat the subpoena as a nullity and will not provide any documents. Please let me know if you intend to seek to enforce the subpoena." That was on August 8th, 2016, more than a month prior to trial.

There were ensuing conversations and attempts to narrow the subpoena. On August 10th, one of the attorneys working on behalf of the defendant tried to narrow it with a number of subjects and narrow the time period from September, 2009 to December, 2010, and the law firm wrote back, "I will check it out with our IT people concerning volume, but your proposal does nothing to address the fact that a vast majority of the emails are likely to be privileged, and it appears you are engaged in a fishing expedition. If there are specific transactions or narrow date ranges you can identify, that may be a starting point."

The discussions ensued, and the law firm advised counsel for the defendant that, with regard to what was sought in the purportedly narrowed universe, there were 36,000 responsive emails. Again, and notably, the law firm was not told there's nothing responsive, they were told there's plenty responsive.

On August 11th, counsel for defendant came up with a further proposal to narrow, and the law firm advised that this did, in fact, narrow it to a scope of acceptable number of documents, but absent waivers of privilege, the law firm did not see how they could produce any of the communications.

Now, I should say for the record that my understanding is that the trustee or those acting for the bankrupt estate of Gerova have declined to waive the attorney/client privilege. So that is something that should be known.

In or about September 6th, counsel for the defendant indicated that they were seeking documents that had been produced to the SEC and believed that there were some, and I think it was shortly thereafter that the government in this case learned of such documents. I know the government has represented that it turned over what it received, and it appears that the law firm may have also done that shortly before trial.

Now, what was turned over, and I have an email September 6th at 4:06 p.m., and I do not know whether what was turned over by the law firm to counsel for defendant is identical to what the defendant turned over, but at some point before trial, the defendant received a listing of documents that the law firm said was responsive to an SEC subpoena, but that they were not producing them, but if the SEC wanted them, they would consider the issue of whether they were privileged or not.

If the defendant had believed that Hodgson Russ had documents that were potentially admissible or that it desired to call Chalian as a witness and wanted these documents for use in presenting Chalian as a witness, it should have pursued the subpoena compliance in a timely manner. It is simply not true that it was unaware that Hodgson Russ had responsive documents until it received a log of documents from Hodgson Russ shortly before trial, or whether it received that log from Hodgson Russ or from the government is immaterial before it received this log.

The defendant received all documents that the law firm produced to the SEC without exception. The fact that the SEC did not ask for documents on the logs doesn't alter this. The SEC never saw the documents and the government has never seen them. Had the defendant pursued the subpoena, the Court would either have quashed the original subpoena without prejudice to a new subpoena or narrowed its scope. Eventually, whether on a narrowed subpoena or a new subpoena, a privileged log would have been produced by Hodgson Russ, and the Court would have heard from Gerova's counsel and from the parties and would have ruled on the privilege issue, but the defendant did not pursue this avenue. In that sense, it sat on its rights. If the defendant wanted relevant admissible evidence from the firm, it should have acted long before trial. Defendant's subpoena could not seek materials only for impeachment purposes, and thus, was never truly linked to whether the government would call Chalian as a witness.

In the exercise of discretion, the government will be allowed to call Chalian as a witness on the narrow grounds stated. The Court has previously permitted the defendant to call an expert belatedly, and the Court concludes there is no cognizable legal prejudice to the defendant. That said, significant measures have been taken here to ensure that there is no prejudice to the defendant, and let me discuss what they are.

The government obtained an affidavit from Hodgson Russ in which they indicated that they had searched for documents containing terms used in Government 601, and that they had done a second search for all emails and attachments sent or received by Shant Chalian, Eric Pinero, and Stephen Weiss relating to Gerova between May 21st, 2010 and May 27th, 2010. The Court has obtained these emails and attachments as to which a claim of privilege is asserted and has reviewed them in-camera. There were 441 emails, including attachments to those emails, and an additional 456 pages of documents in a PDF format.

The emails and the documents are largely a discussion and circulation of draft versions of documents that later became publicly available documents, such as the Form 20-F and the Form 6-K. There were also emails related to other Gerova transactions, such as a joint venture agreement between Gerova and Planet Five, and Net Five Holdings.

The Court did find one document that potentially could bear on the subject matter of the witness' testimony, generously read. Thankfully, I need not concern myself with grounds of invading the attorney/client privilege or finding it waived or otherwise because I conclude that the document is not privileged, it is simply a request for a link to publicly available data. It is not a communication to or from a client, or even among counsel for the purpose of legal advice, as I see it, and so I am going to order produced, and will produce now, a one-line email from Shant Chalian to Eric Pinero, subject "Trading price", the entirety of which reads as follows: "Can you send me the link with the daily Gerova trading prices? Thanks." That's the entirety of the email.

The Court has concluded that the government may call Mr. Chalian. There is no confrontation clause presented by their calling him. The confrontation clause protects an opportunity for an effective cross examination, not cross examination that is effective in whatever way and to whatever extent the defense might wish. That's a quote from U.S. V Owens, 484 U.S. 554 at 559, and the District Court retains wide latitude where the confrontation clause is concerned "to impose reasonable limits on such cross examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, and matters that are marginally relevant." Delaware v. Vanarsdale, 475 U.S. 673, 679.

That is my ruling. One second, please.

(Pause)

THE COURT: We'll hand out the document at this time. Are our jurors ready?

THE DEPUTY CLERK: Yes.

MR. TREMONTE: Thank you, your Honor. May we request a brief, maybe 10-minute recess in advance of the government calling Mr. Chalian to confer and --

THE COURT: Yes.

MR. TREMONTE: -- review that? Thank you.

THE COURT: Do we have a witness on the stand at this time?

MS. MERMELSTEIN: We do, your Honor. He's outside.

THE COURT: Bring him in, please.

I'm marking the email I distributed as Court Exhibit 6, but if anybody wishes to use it in front of the jury, it should be marked by the party who is offering it.

(Continued on next page)

(Jury present)

THE COURT: Good morning, ladies and gentlemen.

JURORS: Good morning.

THE COURT: Good to see you, and I appreciate the smiles. That always helps.

We're ready to begin. Mr. Hinton, the Court reminds you that you're still under oath.

Ms. Harris you may proceed.

PAUL HINTON,

recalled as a witness by the Government,

having been previously sworn, testified as follows:

CROSS EXAMINATION

BY MS. HARRIS:

Q. Good morning, Mr. Hinton.

A. Good morning.

Q. I'd like to start the morning by looking at Government's Exhibit 902. I just want to draw your attention to the date where you indicated that Shahini receives 5.3 million shares, May 27th, 2010.

A. Yes.

Q. Now, after that date, the price of Gerova stock still goes up, correct?

A. Correct.

Q. It goes up through the beginning of June into mid-June, correct?

A. Yes.
Q. By your analysis, at that point in time, the shares are being held in various brokerage accounts, correct?
A. Well, I think they start off in one brokerage account and then --
Q. Are transferred?
A. -- are transferred to another. But I think at this point in time it gets quite early on. So it's the first two brokerage accounts I think involved in this time period.
Q. Right. They're first transferred to Roth Capital?
A. That's right.
Q. And after that to CK Cooper?
A. Right. So CK Cooper is where the shares are on June 14th.
Q. And you reviewed the account statement for both of those accounts, correct?
A. Yes.
Q. And those account statements show that the shares are subject to Regulation S, correct?
A. I don't recall.
Q. Now turning to Government's Exhibit 903. We discussed this briefly yesterday, but the matched trading with the Martin Kelly and Ymer Shahini accounts doesn't begin until later in July, 2010, correct?
A. Yes. July 22nd is when it begins.
Q. Then looking at Government's Exhibit 904, the matched

trading with the TAG accounts doesn't begin until September 28th, 2010.
A. Yes, that's right.
Q. Looking at Government's Exhibit 905, the matched trading doesn't actually begin until October, 2010, correct?
A. Well, the TAG -- it's still the same TAG brokerage activity, it's just that the Rita Cole account doesn't purchase any shares until later.
Q. My mistake. But matched trading with the Cole account doesn't begin until October, 2010.
A. That's right.
Q. Thank you. I want to turn to Government's Exhibit 910. This is the multipage chart. Now, I think it was your testimony on direct that you thought it was notable that there was very little money in the Penine account when the 2.62 million was wired in, correct?
A. Yes.
Q. But that small amount of money, that was as of June 22nd, correct?
A. The beginning of the day, yes.
Q. The beginning of the day, the day that the money, 2.6, was wired in.
A. Yes.
Q. But as of June 1st, 2010, there was actually $90,000 in the account, correct?

A. I don't recall.

MS. HARRIS: If I could have Government's Exhibit 411, please. Mr. Pollock, please pull up page 16.

Q. In the middle of the page there it says "previous balance as of June 1st, 2010", correct?

A. Yes. I can see that down here.

Q. Right. Or actually, if you look at the summary in the middle of the page.

A. Previous balance in the summary, yes.

Q. Right. So $90,341, correct?

A. Yes.

Q. Then turning to page 14, again, the summary section in the middle of the page, the balance as of May 1st, 2010 was $181,157, correct?

A. Yes.

Q. Then turning to page 12, the balance as of April 1st, 2010 was $189,119, correct?

A. Yes.

Q. Looking down at the bottom of each page, it shows the cash in and cash out during the course of the month, correct?

A. Yes.

Q. Then turning to page 9, the previous balance as of March 1st, 2010, I think, there are no commas here to guide me, but I think that's $3,565,543, correct?

A. Yes.

Q. Then turning to page 7, the balance as of February 1st was $38,279, correct?
A. Yes.
Q. Finally, on page 4, the balance as of January 1st, 2010, was $88,250.
A. Yes.
Q. So a fair bit of cash coming in and out every month, correct?
A. Yes.
Q. In fact, I think you did note that there were, even during the time period that you were looking at, there were deposits made into the account unrelated to the Shahini funds that you've identified, correct?
A. Yeah, transfers.
Q. Correct. So looking at the last page of Government's Exhibit 910, there was a deposit -- you've indicated a blue box at the bottom left from an entity called ICA of $687,500, correct?
A. That's right.
Q. There under where it says "transfer" you've identified from "other" of 109,000, correct?
A. Yes.
Q. That was actually a journal entry from a related account; is that right?
A. Transfer from another account, yes.

Q. Okay. Of 189,000?
A. I believe so.
Q. Looking at this chart, Government's Exhibit 910, you labeled the chart "Proceeds to Hirst entities", correct?
A. Yes.
Q. But not all of these entities listed on this chart are, in fact, Hirst-related entities, by your analysis, correct?
A. Just the red and pink ones.
Q. The only ones you're identifying, according to your analysis, as Hirst entities are actually labeled with "Hirst" in parentheses, correct?
A. Yes.
Q. So all of these entities on the right with blue boxes, those are other entities that you've not identified as connected to Gary Hirst, correct?
A. Correct.
Q. Just so the record is clear, this is the column that begins with the "Emerging Markets Global" in a blue box at the top, correct?
A. Yes.
Q. Now, I think you explained on direct that you prepared this chart to show certain transfers during this time period, correct? Withdrawn. Not transfers, but money wired out, correct?
A. Well, actually, I think I said I was using the chart to

summarize all of the activity, but the way in which it's summarized groups some of the activity together.

Q. Because there was too much activity to really put on all --

A. Yeah. I can't put on every individual activity.

Q. And you were only doing this for is certain period of time, correct?

A. Yes.

Q. So if there are transfers back into Pennine after June 22nd, 2010, this chart doesn't reflect that, right?

A. That's correct.

Q. If one of these entities wired money back in July, it wouldn't be shown on the chart, correct?

A. That's correct.

Q. Similarly, if there are other transfers out of Pennine after June 22nd, it wouldn't be shown on this chart, correct?

A. That's correct.

Q. Now, there are, I think, two boxes in that right-hand column that you've identified as "other entities", correct?

A. Yes.

Q. And those were just entities that you grouped together that couldn't be shown on the chart, correct?

A. No. We just chose only to identify entities by name if they had a transfer of $100,000 or more.

Q. Let's talk about that. I want to talk about some of the transfers that actually are not specifically identified by name on your chart.

MS. HARRIS: If I could have Government's Exhibit 428, and this is, I think, a rather large document, but I'm going to try to draw your attention to specific pages within the exhibit. Mr. Pollock, it's page 41 for NCUA-174. I'm sorry. NCUA-169.

Q. So this is a wire out of the Pennine account, correct?

A. It's certainly a wire out of a Grand Adirondack account, yes.

Q. Drawing your attention to the originator information in the middle of the page under "institution information".

A. Yes. It says "Pennine" there, yes.

Q. And this is a wire for $5,502?

A. Yes, that's correct.

Q. The reference at the bottom of the page is "Signature G.M. Peru"; is that right?

A. Yes.

Q. And that wire was done on February 8th, 2010, correct?

A. Yes, that's correct.

Q. Now drawing your attention to the pages beginning at page 88, or NCUA207 of Government's Exhibit 428. This is a transfer on March 3rd, 2010, correct?

A. Yes.

Q. And that transfer is for $30,000, correct?

A. Yes.

Q. Again, from Pennine?
A. Yes.
Q. And the name of the beneficiary is Signature Gaming Management Peru SAC, correct?
A. Yes.
Q. Now drawing your attention to page 66, or NCUA-185 of the same Government's Exhibit 428. That is a wire from the Pennine account on March 23rd, 2010, correct?
A. Yes.
Q. And that wire is for 34,000, correct?
A. Yes.
Q. And that is to an entity called Transtax Ltd, correct? In the middle of the page under "beneficiary information".
A. Yes.
Q. Now drawing your attention to page 117 of Government's Exhibit 428. That's a transfer of $25,000, correct?
A. Yes.
Q. On April 5th, 2010?
A. Yes.
Q. Transfer of $25,000 from Pennine Investors, correct?
A. Yes.
Q. And again, the beneficiary is Signature Gaming, correct?
A. Correct.
Q. In Peru. And then turning your attention to page 104 to 106 of the same Government's Exhibit 428. Again, that's

another $30,000 transfer from Pennine, correct?
A. Yes.
Q. And this one is on April 27th, 2010?
A. Yes.
Q. And again, another transfer to Signature Gaming Management, correct?
A. Yes.
Q. So I think, by my tally, that's over $90,000 to Signature Gaming Management, correct?
A. I didn't do that math.
Q. You looked at two $30,000 transfers, a $25,000 transfer, and a $5,000 transfer, correct?
A. I wasn't keeping track, but I'll take your word for it.
Q. I may actually have missed one. I apologize.
MS. HARRIS: If I could draw your attention to page 160 of the same Government's Exhibit 428. I apologize. It's a big document to jump around in. NCUA-160. I'm sorry. It may be page 41 in the PDF.
Q. This again is a transfer on February 8th, 2010 from the Pennine account?
A. Yes.
Q. That's a February 8th, 2010 transfer of $16,142, correct?
A. Yes.
Q. From the Pennine Investors account?
A. Yes.

Q. I think the beneficiary information is to an address in Peru, correct? If you look under "beneficiary information and address".
A. Well, the financial institution is in Peru, but I think -- it's difficult to say where the -- yes, and the beneficiary is also in Peru, yes.
Q. Thank you. And then the reference at the bottom is "Signature G.M. del Peru", correct?
A. Yes.
Q. So that's another $16,000 that I think is headed to Signature G.M., or Signature Gaming, correct?
A. Signature G.M., yes.
Q. And assuming my math is roughly right, that would take the total to over $100,000 to that one beneficiary, correct?
A. Yes.
Q. In your analysis, did you identify who controlled or was associated with Signature Gaming in Peru?
A. I don't recall.
Q. Isn't it true that Signature Gaming in Peru was associated with Michael Hlavsa?
A. I don't recall.
Q. That's not something the government informed you of when you prepared your analysis?
A. No. We weren't focused on that.
Q. I also want to ask you about a few other wires.

MS. HARRIS: If I could draw your attention to pages -- these are the PDF pages -- 163 in Government's Exhibit 428.

(Continued on next page)

Q. This is a $90,000 transfer, correct?
A. Yes.
Q. A $90,000 transfer on May 25, 2010?
A. Yes.
Q. And that's from Pennine?
A. Yes.
Q. The beneficiary is Sentinel Law, right?
A. Yes.
Q. And turning your attention to page 154 of the same Government Exhibit 428, that's a June 2, 2010 transfer of another $90,000, correct?
A. Yes.
Q. That again is directed to Sentinel Law as the beneficiary, correct?
A. Yes.
Q. And in your analysis, do you identify who was associated with Sentinel Law?
A. I recall it was one of the other defendants in the case.
Q. It was Jared Galanis, is that correct?
A. I believe so.
Q. So that's $180,000 that went to Jared Galanis that's in the other category, correct?
A. Yes.
Q. And we previously, if you recall, looked at a $34,000 transfer to Transtax Ltd.

Do you recall looking at that wire?
A. Yes.
Q. Did you identify in your analysis which party is associated with Transtax Ltd.?
A. I don't think so.
Q. No one provided you with information that it was associated with Arie Van Roon?
A. I don't recall.
Q. So there's a lot of other transfers in that "other" category that don't appear on the chart, correct?
A. Right. They were too small to be individually displayed.
Q. Well, let me mention, we just went through the Signature Gaming transfers, and those totaled over $100,000, correct?
A. Yes.
Q. Going back to Government Exhibit 910, on the last page, Emerging Markets Global, the amount of money received by that entity was actually only $102,702, correct?
A. I don't recall.
Q. Could I draw your attention to Government Exhibit 411.
MS. HARRIS: Withdrawn.
Q. Looking again at Government Exhibit 910, the transfer to First Florida Equity Holdings, that was actually only for $100,000, is that correct?
A. I don't recall the exact amount.
Q. I think it was your testimony on direct that you were using

$100,000 as the cutoff for which entities would be shown on the chart, is that fair to say?
A. What I said was there would have to be an individual transfer of $100,000 or more. That was what we chose as a way of summarizing the information and making it manageable.
Q. So that if one individual or one entity received several transfers that totaled over $100,000, they didn't appear on the chart, correct?
A. We didn't do it that way, no.
Q. So Signature Gaming wasn't on the chart?
A. That's right.
Q. And Sentinel Law is not on the chart?
A. Not on this chart, no.
Q. Let's talk about the three boxes that you have identified as Hirst related entities, in particular, I guess Taurus Global and then these related brokerage accounts and Pennine Investors, Ltd. accounts.
You looked at, as we have talked about, the account documents in this case, correct?
A. Yes.
Q. And the bank statements?
A. Yes.
Q. As you understand it, these entities are investment funds, correct?
A. Well, Global Asset Fund purported to be an investment fund

of some sort.

Q. And a hedge fund of a sort, correct?

A. I don't know how you would classify it that way.

Q. Typically, investment funds invest other people's money, correct?

A. Many do.

Q. A director of an investment fund, unless they have their own money in the fund, they don't owe the money in the investment fund, correct?

A. That's correct.

Q. Now, at the bottom of this chart, you indicate the sources for your analysis, correct?

A. Yes.

Q. And those include various government exhibits?

A. Yes.

Q. You didn't look at any defense exhibits, correct, to prepare this chart?

A. Not to prepare this chart.

Q. You didn't look at Defense Exhibit 900, did you, relating to the corporate governance documents of Pennine Investors?

A. I don't think so.

Q. To determine the role that Mr. Hirst had with respect to Pennine Investors, did you?

A. We looked at the opening account statement.

MS. HARRIS: Can I have one moment, Judge?

THE COURT: Yes.

MS. HARRIS: Your Honor, by stipulation, I offer Defense Exhibit 900, 900A, 900B, 900C, 900D, 900E and 900F.

THE COURT: Any objection?

MS. MERMELSTEIN: No, your Honor.

THE COURT: Received.

(Defendant's Exhibits 900, 900A, 900B, 900C, 900D, 900E and 900F received in evidence)

MS. HARRIS: May I approach the witness, your Honor?

THE COURT: You may.

Q. In case the computer is slow.

A. Thank you.

MS. HARRIS: I apologize, Judge. I have extra copies.

THE COURT: All right.

Q. If you could just take a moment.

MS. HARRIS: And if we could just pull up 900A on the screen.

Q. Have you ever seen these documents before?

A. No.

Q. You didn't see documents that indicated the transfer of management shares in connection with Pennine Investors Ltd., correct?

A. No.

Q. And turning your attention to 900B, the indication there on the middle of the page is that Gary Hirst was no longer a

director at Pennine Investors as of February 27, 2010.
You never looked at that document, correct?
A. No.
Q. You see at the bottom, it indicates that he was appointed president in May 2001, and that he has not resigned as president. But you haven't looked into what it means to be president of Pennine Investors, Ltd., correct?
A. Correct.
Q. You don't know what his duties as president are, correct?
A. Correct.
Q. You don't know what legal obligations he has as president, correct?
A. Correct.
Q. And turning your attention to 900D, if you look at the middle of the page, it looks like it's a special resolution of the shareholders of the company of Pennine Investors, Ltd. appointing Arie Jan Van Roon as the sole director of the company, correct?
A. I see that.
Q. And that document at the top is dated February 27, 2010?
A. Yes.
Q. And you never saw this document when you prepared your analysis, correct?
A. Correct.
Q. Before you identified Pennine Investors as a first entity,

correct?
A. Correct.
Q. And then drawing your attention to 900E, that's a letter signed by Arie Jan Van Roon accepting the appointment to the office of the director of the company as of February 27, 2010, correct?
A. Yes.
Q. And again, you didn't see that document before you prepared your analysis?
A. Correct.
Q. And finally, if I could draw your attention to 900F, again, it looks like it's a resolution of the sole director of the company, at that time Arie Van Roon of Pennine Investors, requesting and authorizing the transfer of all of the management shares of the company from Axiat, Inc. to Pure Glow Finance, Ltd.
Do you see that in the middle of the page?
A. I see that.
Q. Again, you didn't see or analyze that document before you prepared Government Exhibit 910, correct?
A. Correct.
Q. OK. Just going back to Government Exhibit 910.
MS. HARRIS: If I could look at the first page of 910.
Q. This is just the page showing only the $2.62 million transfer or wire, correct?

A. Yes.
Q. So we are clear, when that money is wired out of the CK Cooper account on June 22, it arrives at Taurus Global on the very same day, correct?
A. Yes.
Q. And on that very same day, it's transferred to Global Asset/Pennine, correct?
A. Yes.
Q. And then on that same day, it's actually transferred out again from that account, correct?
A. Yes.
Q. To what I think you testified about as being a Swiss bank account, correct?
A. Yes.
Q. And that specifically was a Soc-Gen account, or Societe Generale account, correct?
A. Yes. It's labeled here Weston Swiss bank account.
Q. Did you in your analysis looked into who owned or controlled Weston?
A. I saw a number of e-mails that all corresponds with people who had Weston e-mails so it appeared to be individuals from that entity.
Q. You didn't look at any account opening documents relating to Weston, correct?
A. I don't recall.

Q. But, in fact, isn't it true that it's Albert Hallac who controls Weston, correct?

A. I saw his name on some of the e-mails.

Q. Just so we are clear, if we skip to page 4 of Government Exhibit 910 --

MS. HARRIS: I'm sorry. Withdrawn.

I would like to go to Government Exhibit 909.

Q. If you look at Government Exhibit 909, looking at the column of boxes on the right-hand side of the page, the fourth box down states that Albert Hallac separately got $1 million out of the related Shahini brokerage accounts, correct?

A. Yes.

Q. He also through Weston was the ultimate beneficiary of the $2.6 million, correct?

A. I wouldn't say that.

Q. Well, let's go back to the fourth page of Government Exhibit 910.

I'm sorry. Let's go to the first page before there are too many arrows.

Your analysis showed that on the very same day that the $2.6 million left the Shahini account, it arrived in a Soc-Gen account for Weston Capital, correct?

A. Yes.

Q. And just a moment ago you made clear that the e-mails you looked at associated Albert Hallac with Weston Capital,

correct?
A. Yes.
Q. So the $2.6 million ended up in a bank account controlled by Albert Hallac, correct?
A. It was repayment of an investment from Weston.
Q. The money ended up in the Weston account, correct?
A. That's what this shows.
Q. And other than this $2.6 million, which seems to flow through Global Asset and Pennine, you did not identify any other Shahini related funds that were associated with Gary Hirst, correct?
A. That's correct.
MS. HARRIS: I have no further questions.
THE COURT: You may redirect.
MS. MERMELSTEIN: Thank you, your Honor.
REDIRECT EXAMINATION
BY MS. MERMELSTEIN:
Q. Good morning again, Mr. Hinton.
A. Good morning.
Q. Let me ask you just a few questions.
First, do the owners or managers of investment funds typically charge fees in connection with the assets under management?
A. Yes.
MS. HARRIS: Objection.

THE COURT: Overruled.

Q. Now, Ms. Harris asked you a number of questions about the entities listed on various of the charts that you prepared.

Have you identified, through documents that you reviewed, the nature or identities of every entity listed on these charts?

A. No.

Q. So in some cases you just listed where the money went from the bank accounts, but you just don't know one way or the other who is associated with that account?

A. That's correct.

Q. And just to be clear, in preparing these charts, you relied only on the documentary evidence, you're not privy to the witness testimony in this case?

A. That's correct.

Q. So there may well be facts that you're just unaware of?

A. I certainly expect so.

Q. OK. Now, in particular, looking at the last page of Government Exhibit 910, which I am just going to ask you to look at the hard copies for a moment. You should have one in front of you. If not, I will pass one back up to you.

A. It's up on my screen.

Q. Let me give you a hard copy as well.

A. Thank you.

Q. We went through during your direct a government stipulation

that referenced Emerging Markets Global, the top box, and Pacific Rim. Do you know anything about Corrigan & Morris?
A. No.
Q. First Florida Equity Holdings?
A. No.
Q. Westmoore?
A. No.
Q. Recovery Capital?
A. No.
Q. I guess we have talked about Gerova Financial Group to some extent.
Earth Spectra Ltd.?
A. No.
Q. ICA?
A. No.
Q. So when you say you have identified the first entities on this chart in red and pink, you don't know one way or the other whether or not these other entities that you have not identified are associated with Hirst or anyone else?
A. That's correct.
Q. Now, just quickly on the Weston Swiss bank account, you have not reviewed the bank account itself, account statements or opening documents for the Swiss bank account, right?
A. Those weren't available.
Q. Swiss bank accounts, it's fair to say, are notoriously

secretive?

MS. HARRIS: Objection.

THE COURT: I will allow it.

A. I believe that's one of the reasons why some of the documents weren't available.

Q. So it's been associated with Weston based on some e-mail communications?

A. Yes.

Q. You don't know who the signatory on that account is, for instance?

A. No.

Q. OK. Now, let's go back then --

MS. MERMELSTEIN: Can we switch to the elmo, Ms. Sheinwald.

Q. You have not reviewed, you mentioned, all these subsets of Defense Exhibit 900, right?

A. That's correct.

Q. Bear with me for a moment.

Just to make clear what this one Defense Exhibit 900B shows, the entry here for Gary Hirst as president indicates that he became president in May of 2001, right?

A. Yes.

Q. And this document was printed on June 30th of 2016, so a few months ago. And he has, according to this document, not resigned as president, right?

A. Apparently.

Q. Now, in reviewing the bank accounts for Taurus Global and Global Asset/Pennine and Global Asset Fund brokerage, Gary Hirst is the only signatory on those accounts, right?

A. Based on the documents that I have seen.

Q. No indication that he is not the signatory as of the date of these charts in 2010, right?

A. I haven't seen anything.

Q. There is nothing to indicate that anyone else ever became a signatory, right?

A. I haven't seen any documents to say so.

Q. So let's go then to Government Exhibit 910, to the first page again. Let's just make sure we are clear about what this says.

Ms. Harris asked you about the amount of money that was in some of these accounts at various points in time.

On June 22, 2010, when the money from the Shahini CK Cooper account goes to Taurus Global and then to Global Asset/Pennine, Global Asset/Pennine has less than $400 in it, right?

A. Yes.

Q. That money that same day is transferred to Weston, right?

A. Yes.

Q. And that was, as you understand it, repayment of a prior investment?

MS. HARRIS: Objection.

THE COURT: Overruled.

A. Yes. There was a prior $5 million transfer to Pennine, which was purported to be an investment that was repaid in two pieces, and this is the second repayment.

Q. On June 22, 2010, when that repayment was made by Gary Hirst, Global Asset --

MS. HARRIS: Objection. Mischaracterizes the testimony.

THE COURT: Rephrase your question.

Q. Based on the documents you have reviewed, Gary Hirst is the only signatory of Global Asset/Pennine bank account, right?

A. Yes.

Q. And indeed, you discussed on direct an e-mail in which he directs the wire to be sent to the Swiss bank account, right?

A. Yes.

Q. So on the day that the Global Asset/Pennine account sent the 2.62 million for payment to Weston, it did not have the money to do it without the $2.62 million that was wired into the account from the Shahini CK Cooper account initially that day?

A. Correct. There was only $300 before that.

MS. MERMELSTEIN: No further questions.

THE COURT: You may step down. Thank you.

(Witness excused)

THE COURT: We will take our mid-morning recess, ladies and gentlemen. Please do not discuss the case among yourselves or with anyone. We will be back in action in ten minutes. Thank you.

(Jury exits courtroom)

THE COURT: One quick question before we break. Is the government seeking, in the event of a conviction, is the government seeking forfeiture of any specific property as opposed to a money judgment of forfeiture?

MR. BLAIS: We haven't identified any specific property in the indictment.

THE COURT: Thank you.

We are in recess.

Next witness is Mr. Chalian?

MR. BLAIS: We are trying to determine that, your Honor.

THE COURT: Thank you.

(Recess)

THE COURT: Bring our jurors in, please.

(Continued on next page)

(Jury present)

THE COURT: The government may call its next witness.

MR. BLAIS: Your Honor, the government calls Shant Chalian.

SHANT CHALIAN,

called as a witness by the government,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: State your name and spell it for the record, please.

THE COURT: First and last.

THE WITNESS: Shant Chalian, first name S-H-A-N-T, last name Chalian, C-H-A-L-I-A-N.

THE COURT: You may inquire.

MR. BLAIS: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. BLAIS:

Q. Good morning, Mr. Chalian.

A. Good morning.

Q. Mr. Chalian, what do you do for a living?

A. I am an attorney.

Q. How long have you been a lawyer?

A. Over 21 years now.

Q. Where did you work in 2010?

A. I was at Hodgson Russ in New York.

Q. What was your title at Hodgson Russ?

A. Partner.
Q. When you worked at Hodgson Russ, was Gerova Financial Group Ltd. one of your clients?
A. Yes, it was.
Q. Were you the lead lawyer on the Gerova relationship?
A. I was the second lawyer on the relationship.
Q. Who was the lead lawyer?
A. Stephen Weiss.
MR. BLAIS: Ms. Sheinwald, could you please pull up Government Exhibit 601, which is in evidence.
Q. Mr. Chalian, do you see Government Exhibit 601 on the screen in front of you?
A. I do.
Q. Mr. Chalian, did you prepare this document?
A. No, I did not.
Q. Did you do the calculations reflected in this document?
A. No, I did not.
Q. During the time period May 21 through May 27, 2010, did you ever see this document?
A. No, I don't recall seeing it.
Q. During the time period May 21 through May 27, 2010, did you work on any calculations regarding shares to be received by Ymer Shahini?
A. No, I did not.
MR. BLAIS: No further questions, your Honor.

THE COURT: You may cross-examine.

MR. TREMONTE: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. TREMONTE:

Q. Mr. Chalian, you and Mr. Weiss were not the only lawyers at Hodgson Russ who were involved in representing Gerova, correct?

A. That's correct.

Q. There was another lawyer named Eric Pinero on the matter?

A. Yes, there was.

Q. He was on the matter throughout 2010, is that correct?

A. I would say that's correct, yes.

Q. During the course of your work representing Gerova, you performed any number of warrant calculations, is that correct?

A. From time to time they were required, yes.

Q. One of the warrant calculations that you performed was in connection with the exercise of certain warrants by Noble, correct?

A. I don't recall that specifically.

Q. That was in June 2010 that that warrant was exercised?

A. I don't recall that. Sorry.

Q. You also were involved in a warrant calculation in May of 2010?

A. I believe I was, yes.

Q. Do you remember the particular warrant that you worked on in May?

A. As I recall, that related to the publicly traded warrants.

MR. TREMONTE: Your Honor, if I may have a moment?

THE COURT: Yes.

MR. TREMONTE: No further questions, your Honor.

THE COURT: Any redirect?

MR. BLAIS: No, your Honor.

THE COURT: You may step down.

THE WITNESS: Thank you, your Honor.

(Witness excused)

MS. HECTOR: Your Honor, may we read a stipulation?

THE COURT: Yes.

MS. HECTOR: "United States of America v. Gary Hirst.

"It is hereby stipulated and agreed by and among the United States of America, by Preet Bharara, United States Attorney for the Southern District of New York, Brian Blais, Aimee Hector and Rebecca Mermelstein, Assistant United States Attorneys, of counsel, and Gary Hirst, the defendant, by and with the consent of his attorneys, Michael Tremonte and Justine Harris, that:

"1. Government Exhibit 700 is a true and accurate copy of a telephone call lawfully intercepted by the Federal Bureau of investigation on July 28, 2010. The telephone call contained in Government Exhibit 700 was placed at 6:22 p.m., Pacific Daylight Time, by Jason Galanis, from telephone number (310) 425-9575, to Gary Hirst at telephone number (407)

805-0422.

"2. Government Exhibit 701 is a true and accurate transcript of the recording contained in Government Exhibit 700. Government Exhibit 701 lists true and accurate information for the recorded conversation, including the date and time of the conversation, as well as the identity of the individuals speaking.

"It is further stipulated and agreed by and among the parties that this stipulation is admissible as a government exhibit at trial."

Dated September 19, 2016 and signed by the parties.

The government now moves for the admission of Government Exhibit 1509, which is the stipulation, as well as Government Exhibit 700 and 701.

THE COURT: Any objection?

MR. TREMONTE: No objection, your Honor.

THE COURT: Received.

(Government's Exhibits 1509, 700 and 701 received in evidence)

MS. HECTOR: Your Honor, we are going to play that recording for the jury, and if we may pass out Government Exhibit 701, which is the transcript that we just admitted, so that the jurors can follow along.

THE COURT: Any objection?

MR. TREMONTE: No objection.

THE COURT: Ladies and gentlemen, the transcript is an aid to listening. It is what is on the tape that controls, not what is on the typed transcript. So what you hear is what controls, not what it says on the piece of paper. If there is any variation between the two, I am not suggesting there will be, but it's just simply an aid to listening to the audio recording.

MS. HECTOR: Now, your Honor, we would like to play Government Exhibit 700.

THE COURT: All right.

JUROR: Is it just one or two copies? Is it just 701?

MS. HECTOR: It's just 701. There may be extras.

MS. MERMELSTEIN: We are having slight technical difficulties, but we will try one more time.

THE COURT: Take your time.

(Audiotape played)

(Continued on next page)

MR. BLAIS: Your Honor, the government rests.

THE COURT: All right.

MR. TREMONTE: Your Honor, may we approach?

THE COURT: Yes.

(Continued on next page)

(At sidebar)

MR. TREMONTE: Your Honor, a couple things. We have a motion to make, and I think that there's at least a handful of the documents that we still need a ruling on; is that correct?

MR. BIALE: Correct.

MR. TREMONTE: With respect to the motion, we move for acquittal on all counts on the grounds that the evidence submitted by the government in its case in chief is insufficient to sustain a conviction on the conspiracy to commit securities fraud and substantive securities fraud counts, the evidence is not sufficient to show that Mr. Hirst engaged in a scheme to defraud, or that he omitted to state any material fact, or that he engaged in any act or practice that would operate as a fraud, or that he agreed with others to do so.

The evidence is not sufficient to prove beyond a reasonable doubt that Mr. Hirst withheld any material information concerning the issuance of warrants or shares to Ymer Shahini from the company, or Gerova's board of directors, or its shareholders.

On the conspiracy to commit wire fraud and substantive wire fraud counts, the evidence is not sufficient to show that Mr. Hirst engaged in a scheme to defraud others of money or property within the applicable statute of limitations. There is no charged conduct within the applicable statute of limitations that could serve as the predicate for the wire fraud counts. To the extent the government contends that the January, 2011 letter to the New York Stock Exchange brings the charge within the statute of limitations, that letter contains no misrepresentations; to the contrary, the letter shows that Gerova's board of directors, its officers, and its outside counsel were aware that Mr. Galanis maintained control over the shares that Mr. Hirst authorized to be transferred to Ymer Shahini.

Your Honor, we also move for a mistrial based on motions that we previously made to strike certain testimony which -- just give me one second.

(Pause)

MR. TREMONTE: I'm going to go back to the Rule 29. On the wire fraud and conspiracy to commit wire fraud counts, we're also moving on the grounds that the evidence is insufficient, not just on statute of limitations grounds.

Back to the mistrial motion. That the evidence concerning matched trading and market manipulation and investment advisor fraud is too attenuated and not connected to the charged conspiracy. On that ground, we move for a mistrial.

MS. HECTOR: Your Honor, with respect to Rule 29, the government believes that there has been sufficient evidence deduced at this trial to show that Gary Hirst, in fact, agreed with others to orchestrate a scheme to issue the shares to Shahini for no apparent business purpose, that he failed to disclose the issuance of those shares to Gerova's shareholders and its officers and directors, including when he failed to disclose the existence of those shares to Michael Hlavsa in connection with his conversations with Mr. Hlavsa in June when he was preparing the 20-F. We believe that you have heard from witnesses that such an issuance was a material fact that would have been important for investors to know, and there is ample evidence to show that the defendant acted knowingly and intentionally in doing so, including signing what we believe is a backdated warrant agreement and taking steps to hide the issuance of those shares.

With respect to the securities fraud counts, there is evidence to show use of the mails or an instrumentality of interstate commerce, including emails, Skype account, and the actual mails.

With respect to the wire fraud counts, there is evidence of wires that cross interstate and international boundaries that were sent in furtherance of the scheme.

With respect to the statute of limitations argument -- first of all, with respect to the conspiracy counts, there certainly is actions in furtherance of the conspiracies that goes well into all the way up into 2011, including the matched trading that occurred.

With respect to the substantive counts, there are specific use of the mails and wires that the defendant was directly involved in, and specifically we would point to that January 28th, 2000 letter that was sent to the New York Stock Exchange, both by mail and by wire, and that we, too, suggest contained material misrepresentations about the nature of the warrants and the shares that were issued to Mr. Shahini, and so we do believe that there is sufficient evidence in this record to allow this case to go to the jury.

THE COURT: Thank you.

Anything further?

MR. TREMONTE: Nothing further, your Honor.

THE COURT: The motions are denied.

Let me hear from you on the outstanding exhibits.

MR. BIALE: Your Honor, we've come to an agreement with the government on most of the exhibits that we submitted to your Honor that there were outstanding objections to. There are a few that remain. We gave a copy to your Honor, and we will get them from counsel table. But the ones that remain are Defendant's Exhibit 1000, Defendant's Exhibit 1001A, Defendant's Exhibit 1001B --

THE COURT: Wait. 1000.

MR. BIALE: 1001A, 1001B, 1001E, 1001H, and 1001L.

THE COURT: F?

MR. BIALE: L as in Leonard.

THE COURT: All right. And these are objections by the government to your exhibits?

MR. BIALE: Correct, on relevancy grounds.

THE COURT: So it's A, B, H, L?

MR. BIALE: Yes.

MS. HARRIS: And E.

MR. BIALE: And 1001E.

THE COURT: And 1001E?

MR. BIALE: Yes, your Honor.

THE COURT: All right. I will rule on that shortly. Not this minute, but I will review the exhibits.

The government's objection is relevance?

MS. MERMELSTEIN: Yes, your Honor.

MR. BIALE: Your Honor, we can make a brief proffer as to their relevance?

THE COURT: Whatever you want to do.

MR. BIALE: Jack Doueck testified that he believed that the price of Gerova's shares were going down because of short sellers.

THE COURT: Right.

MR. BIALE: These exhibits establish that Mr. Hirst believed the same thing and, indeed, was told the same thing by Jason Galanis, and that he took steps to try to save the company from these short sellers. Accordingly, we think it's highly relevant to his state of mind and his knowledge about the government's -- strike that -- his knowledge about the matched trading and directly rebuts the government's contention that Mr. Hirst was aware that stock price was going down due to these matched trading efforts. So it's highly relevant to rebut the government's evidence as to Mr. Hirst's state of mind.

THE COURT: Thank you.

MS. HECTOR: I'm sorry. We just don't see the relevance of these documents. First of all, they are prior to the issuance of the Dalrymple report.

THE COURT: So prior to the issuance --

MS. HECTOR: -- of the Dalrymple report. So to the extent Mr. Doueck indicated there was some concern post the printing of the Dalrymple report that there were short sellers in the market and responding to that, that was after January, 2011, and the documents that they're seeking to admit, I believe, are from November, 2010, so prior to that.

MR. BLAIS: To the extent that there were short sellers in the market that may have been putting pressure on Gerova's price, it doesn't seem particularly relevant to the issues at trial. Some of those exhibits, for example, include an Amazon record that Mr. Hirst purchased a book about short selling, there's links to public articles about short selling, there's a Yahoo message board, so it sort of strays fairly afield we think from the issues that are at issue in the trial.

THE COURT: Could I impose on you to just look to see that what is in my hand right now is the only thing you are seeking to offer?

MR. BIALE: Yes, your Honor. We are missing one, your Honor.

THE COURT: Which one?

MR. BIALE: 1001A and 1001B.

THE COURT: Here's 1001A. And 1001B? I think it's there. Look for it.

MR. BIALE: B is here.

MR. BLAIS: Amazon is the 1000.

THE COURT: I was missing 1001. Thank you.

MR. BIALE: Yes. I stand corrected.

THE COURT: So with the inclusion of A, I have the complete universe. Thank you.

MR. BIALE: That's right, your Honor. If I can just briefly respond to the government's point. I believe Mr. Doueck's testimony was that the Dalrymple report evidenced short sellers that were in the market who are then spreading negative information about the company. So there was awareness that there were short sellers before, but irrespective of when these short sellers came about, it's inconsistent with the government's theory of Mr. Hirst's guilt that he knew that this market manipulation, or was reasonably foreseeable to him that this market manipulation would take place and would drive down the price of the stock, and instead, he believed, as did other principals at Gerova, that the problem was short sellers, and as evidenced on the call that the government just played, Government's Exhibit 700, Mr. Galanis is still telling him, as of July, 2010, that he is hoping that the stock price will go up. So we think it's highly relevant to Mr. Hirst's state of mind.

THE COURT: How would you get these exhibits in? By stipulation?

MR. BIALE: Yes, your Honor.

THE COURT: All right. Thank you.

(Continued on next page)

(In open court)

MR. TREMONTE: Your Honor, the defense calls John Shumway. He's on his way in.

JOHN SHUMWAY,

called as a witness by the Defendant,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: State your name and spell the whole name for the record, please.

THE WITNESS: My name is John Shumway. J-o-h-n, S-h-u-m-w-a-y.

THE COURT: You may inquire.

MR. TREMONTE: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. TREMONTE:

Q. Mr. Shumway, you have a laptop computer with you?

A. I do.

Q. Why don't you take it out and turn it on.

A. Sure.

MR. TREMONTE: Your Honor, may I confer briefly with the courtroom deputy?

THE COURT: You may.

(Pause)

MR. TREMONTE: Your Honor, we're just establishing a connection to the witness's laptop.

THE COURT: That's fine.

BY MR. TREMONTE:
Q. Mr. Shumway, can you confirm that you've connected your laptop?
A. Yes, it is connected.
Q. Thank you. Mr. Shumway, I don't know that we're going to succeed to connecting you to the courtroom system, so I think we're going to have to talk our way through the information. Okay?
A. Okay.
Q. Mr. Shumway, where do you work?
A. I work at Stroz Friedberg.
Q. What is Stroz Friedberg? What does it do?
A. Digital risk investigations and analysis, computer forensics, incident response.
Q. Who are Stroz Friedberg's clients?
A. Law firms, private companies, and the government, generally.
Q. How long have you worked at Stroz Friedberg?
A. I've been there for over eight years now.
Q. What's your position there?
A. I'm a senior consultant.
Q. In your job as a senior consultant at the firm, what do you do generally?
A. Generally, I make forensic copies of all sorts of electronic media; hard drives, laptops, desktops, mobile

images, cloud storage, webmail, and then conducting analysis on the same.

Q. What kind of cases do you work on?

A. It's a wide range. One of our more common types of cases we describe as a department employee review. Somebody will leave one company and go to a new one, and as part of that, one or the other of the companies will hire us to see if data was incorrectly taken from one company.

Q. So that's just one example of any number of different types of cases that you work on, correct?

A. Sure. We do data recovery, deletion analysis, those sorts of things, as well.

Q. Do you have a specialty within your firm, or are you a generalist, or both?

A. We're all pretty general. If I did have a specialty, I would say it was iPhone forensics.

Q. Tell us about your educational background after high school.

A. Sure. I graduated from UC Berkeley, University of California at Berkeley in 2007 with a music degree with honors, and then after starting at Stroz, I've done a number of external trainings there. Two from Guidance Software, that's a company that makes one of the more common forensic programs that we use, as well as an advanced mobile SmartPhone forensics, and a Hacker Tools and Techniques course. Those are

all external trainings.
Q. So you have specialized in training in computer forensics?
A. Yes, sir.
Q. Do you have any certifications?
A. Yes. GCIH. That was related to the Hacker Tools and Techniques. And GIAC certified incident handler certification.
Q. Have you ever testified before at a trial?
A. No, sir.
Q. In the course of your work, you perform, I think you said, forensic analyses of computer data?
A. Yes, sir.
Q. What kind of data do you analyze, generally?
A. It can be all sorts. Most of what we do is the files that relate to the hard drive, I would say. That's the data within the file itself, internal and external metadata, tracking those files, and similar.
Q. So digital computer files, correct?
A. Yes, sir.
Q. You also perform forensic analyses on digital document files?
A. Yes, sir.
Q. As well as cell phone data, it sounds like.
A. Yes. And some cloud storage, webmail, that sort of thing.
Q. You're familiar with the concept of metadata? I think you just referred to it?

A. Yes, sir.

Q. What is metadata?

A. Generally, metadata is described as data about the data. It's information about the information stored on disk.

Q. Is metadata created automatically?

A. Yes. Most metadata is created by the computer, although there are certain fields that would track what a user could put in.

Q. When you say "created by a computer", that would be by some kind of a software program running on the computer?

A. Correct.

Q. What kind of things can you learn from metadata?

A. Metadata can and does track almost anything. It can be programmed, or a program can be designed to put anything into metadata. But the more common fields are things like geolocation data, the coordinates a picture was taken, timestamps, author, the make and model of a camera, if it's a picture, the length of a video might also be in metadata.

Q. The metadata can also tell you information about the computer that's running the software?

A. Yes. It can tell you about the software. Sometimes the computer runs the software, and you can make inferences about computers based upon the software that was running.

Q. Can the metadata sometimes also record information about, for example, the version of the software that's running?

A. Yes.

Q. What kind of information about the version of the software do you find in metadata?

A. Generally, software is given a number. So you'll have a particular version of the software, and that number will be assigned. When you get a new version, that software, that number is updated, so that tells you something about which version of software was running at the time.

Q. Do you personally have experience from your work analyzing metadata?

A. Yes, sir.

Q. Have you analyzed metadata in the cases that you've worked on during your tenure at Stroz Friedberg?

A. Yes, sir. I would say the vast majority of cases involve some form of metadata.

MR. TREMONTE: Your Honor, at this time the defense offers Mr. Shumway as an expert.

THE COURT: Any objection?

MR. BLAIS: No objection, your Honor.

THE COURT: Okay.

BY MR. TREMONTE:

Q. Mr. Shumway, tell us when you became involved in this case.

A. Just earlier this month. September 13th of this month.

Q. Were you provided with documents or other materials?

A. Yes. My supervisor forwarded me an email that had four attached documents.

Q. Do you know where your supervisor got the email from?

MR. BLAIS: Objection, your Honor.

THE COURT: Do you know the answer to that question?

THE WITNESS: Where my supervisor received it?

THE COURT: Yes.

THE WITNESS: Yes, sir.

THE COURT: Okay. You may answer.

THE WITNESS: He received it from his manager who was managing the case, who received it from, I believe, the law firm.

MR. TREMONTE: If we may have a moment. Since we can't bring up the -- I'm told there may be a way to bring up the computer. Hold on one second.

(Pause)

BY MR. TREMONTE:

Q. Mr. Shumway, can you bring up the -- turn on your laptop again. I think we're going to try to run it off of our table.

I'm going to skip ahead a little bit, and I'm going to ask you to bring up the metadata file that I anticipate we'll be asking you about. If you can do that, then we'll bring the laptop to the defense table and plug it in.

MR. TREMONTE: Your Honor, while we're connecting, can we come up for a very brief sidebar?

THE COURT: Yes.

(At sidebar)

THE COURT: I'm reasonably sure that this trial has broken the record for the number of sidebars that I've permitted. Not the number that have been requested, but certainly the number that I've permitted. Go for it.

MR. TREMONTE: I'm sorry, your Honor. So the exhibit is a digital file. It doesn't exist in the world except on computers. So I just wanted to make clear with the government, I think we're on the same page, that we're going to agree that the witness has on his computer a copy of Government's Exhibit 509D, which is a digital copy of the warrant agreement together with its metadata.

THE COURT: Well, as is customary in this district, a representative of the government is welcome to stand right behind the witness and observe in realtime what he's looking at.

MR. BLAIS: We have no objection. We understand the file to be 509D. So we have no objection to him --

THE COURT: But if anybody wants to stand there, they're welcome.

MR. BLAIS: I would rather not.

THE COURT: You'll be standing at defense table because we're going to put the laptop up there.

MR. BLAIS: That may be more appealing.

MS. MERMELSTEIN: You may have it being worked out for

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you.

MR. TREMONTE: Great.

THE COURT: Okay, thank you.

(Continued on next page)

(In open court)

THE COURT: Are we ready to go?

MR. TREMONTE: Your Honor, given the issues that are particular to digital data, we have reached an understanding that I will ask Mr. Shumway questions about certain data that he was able to look at in 509D. Government's Exhibit 509D. After Mr. Shumway's testimony, we're going to prepare an exact replica of that information, put it on a CD, and make it available to the government and to the Court.

THE COURT: That's acceptable to the government?

MR. BLAIS: Yes. We have no objection. We just want to preserve the materials.

THE COURT: I have it. Good idea.

Thank you. You may proceed.

BY MR. TREMONTE:

Q. Mr. Shumway, I'm going to ask you, do you have on your computer there what's been marked as Government's Exhibit 509D? I'm going to refer to it at the Shahini warrant.

A. I do have a copy of it, yes.

Q. A copy on your computer, correct?

A. Correct.

MR. TREMONTE: Madam Deputy, can you publish that to the jury's screen, please? We've got it.

BY MR. TREMONTE:

Q. Mr. Shumway, what kind of file is that?

A. The Shahini warrant file?

Q. Yes, sir.

A. That is a PDF file.

Q. Okay. And what is a PDF?

A. PDF stands for portable document format. It's a format that was devised essentially to allow people to share documents with someone else who may not have the exact same software.

Q. How are PDF's created?

A. There's a number of ways. Commonly these days you would create a PDF by converting it from another form of document. A Word document would very often be converted into a PDF. A second one is to print to PDF. That's essentially the same process, but the Word program thinks it's actually sending the document to a printer, another program acts as a sort of middleman and creates the PDF.

Q. Now, directing your attention to the exhibit, which we'll just call the Shahini warrant, do you know how the Shahini warrant was created, that PDF?

A. Yes. That wasn't either of those two ways, it was scanned using a scanner or copier sort of machine, and was created in PDF that way.

Q. Does the Shahini warrant contain metadata?

A. It does.

Q. Did you analyze the metadata?

A. Yes, sir.

Q. Did you use tools to analyze the metadata?
A. Yes, sir.
Q. What tools did you use?
A. I used Adobe Reader and Acrobat. Those are the most common publicly available tools for those. I also used what we would refer to as forensic tools. Exif Tool was one, that looks at the internal metadata of a variety of files, as well as Xpdf, and then I also looked at the files themselves in two different forensic applications, MTK and EnCase.
Q. I count two Adobe programs and four other forensic programs; is that correct?
A. Yes, sir.
Q. That's a total of six tools that you used?
A. Correct.
Q. Let's start with the Adobe ones. You said you used Adobe Reader?
A. Yes.
Q. What did you learn from inspecting the metadata of the Shahini warrant with Adobe Reader?
A. Adobe Reader showed a number of metadata fields, including a creation time, a modification time, an author, a title, and an application field. That referred to the application that created it.
Q. Can you walk us through those? What did you find?
A. Sure. The creation time had a creation timestamp of

April 9th, 2010. The last modification time, which refers only to the last time that document was changed, was September 27th, 2010. The author field was Admin 1, the number 1. The title field was blank, and the application was ScanSnap Manager.

Q. Then you said, I think the other Adobe program you used to analyze the metadata was Adobe Acrobat; is that correct?

A. Yes.

Q. What did you learn when you analyzed the metadata using Adobe Acrobat?

A. Acrobat had a few -- well, allowed me to see a few further metadata fields, including, instead of "application", that field was named "creator". So ScanSnap Manager was labeled as the creator when you viewed it through Adobe Acrobat.

There was also a metadata timestamp, which was also September 27th, the same time as the last modification timestamp. That's 2010.

There was a data time associated with the version of XMP, which is a built-in protocol that Adobe uses to store metadata.

Q. Can you just explain a little bit more about the XMP protocol? What does that mean, "a protocol"?

A. Sure. So there are different ways of storing metadata in a PDF. The one that Adobe has began using with version 1.4 of PDFs was called XMP. That's extensible metadata platform. It's just the way that they design metadata to be stored in a

PDF. So the version of this particular XMP toolkit that was used in this file was dated from 2009.

Q. Using Acrobat, you were able to get a little bit more information than you were using Reader.

A. Yes, sir.

Q. The date of 2009 for the XMP protocol -- do I have that right?

A. Yes.

Q. -- is that consistent with the other information that you saw in the metadata using Adobe Acrobat?

A. Yes, sir. At the time of the creation or modification, the XMP protocol in use was enabled, so that would be internally consistent.

Q. In other words, the 2009 XMP protocols is before the April, 2010 create date.

A. Correct.

Q. And that's internally consistent.

A. Yes, sir.

Q. It would be inconsistent if your XMP protocol was, say, 2015 and your create date was 2001.

A. Correct.

Q. What, if anything, were you able to determine using the Adobe programs about the device that was used to create the document?

A. So the application, as listed in Adobe Reader, and the creator as listed in Acrobat was ScanSnap Manager, which I did a bit of research, and that is a piece of software published by Fujitsu for use with their scanners.

Q. When you say "published by Fujitsu" that is that Fujitsu writes the software that runs the devices that they sell?

A. Yes. It's available for download from their website.

Q. Okay. Did you do research to determine whether or not that software comes bundled with the scanner?

A. Yes. Depending on the version you bought, ScanSnap Manager comes along with the scanners, as well as either Adobe Reader or Acrobat, depending on the version. This was true in 2010, as far as the results of my research.

Q. Let's move to the other tools that you used. I think there were four others. Let's start with the first one you mentioned, which I believe is Exif. What is Exif?

A. Exif Tool is an openly available piece of software which was originally designed to analyze and change large numbers of metadata tags in photographs. If a photographer wanted to update a lot of photographs at once, they could run this tool. It has since been useful in that it can pull out metadata from a large number of types of files.

Q. When you say "openly available", what does that mean?

A. It's free to download, the instructions are published on the web, it's part of any open source forensics toolkit.

THE COURT: Open source forensics? Is that what you said, sir?

THE WITNESS: Yes, sir.

THE COURT: Forensics, and what was the word after the word "forensics".

THE WITNESS: Toolkit.

THE COURT: Thank you very much.

Q. In your experience, this is a widely used tool for the purpose of analyzing metadata forensically?

A. Yes. It's one of the few listed on Wikipedias or others sort of how-to instruction manuals for forensics.

Q. How does it work?

A. It's a command line tool, which means that there's no interface for clicking, it's not a window that you use. So it's all typed into a command line, and there are a number of flags or switches that you use to determine exactly how the process will run.

Q. Can you visually display on your computer screen what you bought up in Exif, or just with other programs? The metadata, I mean.

A. I can show the output of the Exif Tool. I could also show the running of the Exif Tool. Either way.

Q. Can you show the output, please.

A. Certainly. So this is the first 31 lines of the output.

Q. And how many lines does it run to?

A. 774.

Q. Again, this is all metadata, this is all sort of automatically created and stored information that you find when you perform this kind of analysis?
A. Yes. Some of this is a summary built by Exif, and some of this is sort of administrative overhead of Exif, as well.
Q. You can take that down.
So using Exif, what did you learn about the metadata in the Shahini warrant, if anything?
A. Certainly. So in Exif, I discovered that there were multiple PDF dictionaries which stored metadata. In particular, there were two different dictionaries which had -- one was the XMP protocol, as I mentioned earlier, the other was simply a document information dictionary. Each of those dictionaries had a set of creation modification dates, as well as author, title, and application.
Q. All right. So let's break that down.
First of all, what's a dictionary? You referred to "a dictionary". What's a dictionary? We all know what a dictionary is in general -- I'm sorry, strike the question -- in the context of the analysis of the metadata in this document. You testified that Exif revealed there were two different metadata dictionaries, correct?
A. There were three in total, but two that contained timestamps, yes.
Q. Thank you for the clarification. Just if you could clarify

for us, what does the word "dictionary" mean in this context?
A. Sure. In this context, in the metadata, it's essentially a container for the metadata.
Q. Okay. So in other words, if there are three dictionaries, there are three different collections of metadata --
A. Yes.
Q. -- in the document.
A. Correct.
Q. Could you determine how those dictionaries were created?
A. Not specifically. The dictionaries don't say necessarily what program creates them.
Q. But they're created by a program.
A. Yes. Those are created as part of the automatic processes that created metadata.
Q. Could you tell whether or not the dictionaries were created by the same or different programs?
A. Not directly. It's not inherent in the metadata. But the difference in the way in which it was stored, the fact that one was a simple dictionary and the other was the XMP dictionary would lead me to believe that there were different programs that created them.
Q. Why don't you tell us what you found in those containers, those dictionaries.
A. Sure. The XMP dictionary, that seemed to be the dictionary that Adobe displays when it is open and when you look at the

properties. That had the creation date of April 9th. The modification date of September 27th, the blank title, admin 1 is the author.

The other dictionary, which did not have the XMP protocol and was not necessarily displayed by Acrobat or Reader, had a creation date of April 9th, a last modification date of April 9th, and a title that was not blank.

Q. What was the title?

A. The title was Partnership_AGR_Balkin.

Q. And how do you spell Balkin?

A. B-a-l-k-i-n.

Q. Not having you spell Balkin, how was the word Balkin spelled in the XMP metadata dictionary that you observed using this tool?

A. It was spelled B-a-l-k-i-n. And just to clarify, it was in the non-XMP metadata dictionary.

Q. Thank you for the clarification. Okay.

So the creation dates of April 9th, 2010 agreed as between the XMP container and the other container?

A. Yes, both were identical.

Q. You testified earlier about internal consistency. What, if anything, did the information that you saw in these multiple dictionaries tell you about the internal consistency of this information?

A. I would say that between these two containers, they were both internally consistent. The only conclusion I would draw is that whatever program caused the change that updated the modification time with the XMP container to September 27th did not also affect the other.

Q. Okay. So that would suggest there's two separate programs operating independently of each other, correct?

A. I would say that's the most likely. Either two separate programs operating independently, or simply one program that did the modification at some point that did not affect the non-XMP dictionary, yes.

Q. Okay. Then the next tool that you used, I think was called Xpdf?

A. Yes. That's a suite of tools that I used, one executed from that suite.

Q. Which one?

A. PDFinfo.exe.

Q. What, if anything, did you learn from that?

A. That displayed a smaller set of metadata that agreed with everything from Exif.

Q. And how about, were you able to obtain additional information from the other tools that you used?

A. Nothing different, no.

Q. Also, in addition to performing these analyses using these tools, did you do any other research; for example, internet research?

A. Yes. I did some internet research looking for what the ScanSnap Manager was and what it was bundled with, as well as what version of software were available at the time in 2010.
Q. What did you find?
A. The version of the XMP Toolkit in use was available at the time, as well as the version of Acrobat Distiller that created PDF.
Q. Again, back to the Shahini warrant. The metadata shows a create date of April 9th, 2010; is that correct?
A. That's correct.
Q. Is that evidence of the actual creation date of the document in your view?
A. Not necessarily. As a forensic examiner, we have to understand the possibilities of metadata being changed or any other data that we look at.
Q. So to conclude that that April 9th create date is accurate, you have to make some assumptions, correct?
A. Yes, sir.
Q. For example, why don't you give us some examples?
A. Sure. The PDF only knows what time it is based on the clock of the computer created. So we would have to assume that the clock that created -- the clock on the computer that created that PDF would also be correct.
Q. Okay. So computers have internal clocks, correct?
A. Yes, sir.

Q. Do these typically update automatically?

A. They can if you are part of a network that is administered by IT professionals, or it might check certain sources on the internet.

Q. Also, if you set your personal computer to have the time automatically updated and you're connected to the internet, that will also result in your clock being set accurately; is that right?

A. Yes, sir.

Q. You said that you are aware of other ways that metadata can be altered. Can you describe some of those to us?

A. Sure. So there are metadata editors for PDFs that can be downloaded. Those would allow you to change certain metadata fields, including those that Adobe might not allow you to.

Adobe itself allows you to change certain metadata fields like title, author, that sort of thing. If the clock is purposely set incorrectly, that would also change the metadata in PDF.

Q. Based on your analysis of the metadata on this document, the Shahini warrant, did you find any evidence that the metadata for the document was altered?

A. There was no evidence to suggest that it was, no.

Q. In certain indications when metadata has been altered, are you able to determine that?

A. Yes, in certain circumstances.

Q. How?
A. It relates to that internal consistency I mentioned, if a document claims to have been created by a program that wasn't available at the time. If the document says it was created in 2001 and the program wasn't written until last year, that would be an indication of that data.
Q. Do you see any of those factors present in this metadata?
A. No, sir.
Q. Now, you mentioned that, in addition to the create date, there's also a modification date of September 27, 2010. Can you explain to us, what are the types of things that could cause the metadata to indicate there was a modification that would leave that indication?
A. Certainly. So the modification timestamp tracks the last time something was changed. That could be a change in the metadata itself, I mentioned updating the author field, that might change the metadata timestamp, as well as the last modification timestamp. Any changes to the content of the document that would cause it to be saved would also update that modification time. And with this particular file format, PDF, if you create a new PDF, that keeps the old creation time but causes a new modification time to be created.
Q. Did you form an opinion as to what caused the modification of this document on September 27th, 2010?
A. There are a few possibilities. One of them relates to the

difference in the title fields. One is blank, the other is not. So it could have been something that related to the change of the metadata of the title.

Another option is, if something was received by email and then saved to someone's desktop, that save-as action would update the modification time.

Q. Would something as simple as saving the document to a desktop potentially cause an alteration that would result in that modification indication?

A. Yes, sir.

Q. And how about an automatic upgrade to the Adobe software?

A. That's certainly possible. If there was a change at some point and it was saved under a new format, that might cause an update to the modification time in the file.

Q. You also looked at the text of the document itself, correct?

A. Very briefly, yes.

Q. Did you form an opinion based on your analysis of whether or not the text of the document was altered?

A. I did conduct a thorough analysis to see if it was altered, but based on a quick visual inspection, and the fact that it was a scanned document and not a converted document, I would say that any alteration to the file would be relatively evident to the layman. The document has the sort of imperfections, dark spots, it's not exactly square to the page that you would expect from a scanned document.

Q. Okay. Based on your analysis of the document, and in particular the metadata, did you reach any conclusions about when it was created?

A. There were two different internal create dates that listed a time of April 9th, 2010.

Q. Okay. Now, did that suggest to you that the create date was accurate?

A. I saw no indication to suggest that it wasn't.

Q. Given that you found these two separate metadata containers, if someone were determined to alter the create date in an internally consistent way, what would that entail?

A. If a user wanted to intentionally alter the internal metadata, they would need to use a program that displayed not just the one, but both of the internal creation times. Either that, or if they were going to use the clock to backdate the PDF, they would have to know of the presence of the second dictionary and know of a program that would affect one dictionary but not the other in order to make it look the way it currently does.

Q. What would it take to figure out how to do those things?

A. I would say some internet research, and then probably a lot of trial and error.

Q. And based on your experience, how long would you estimate that that would take to do, someone who is knowledgable about this kind of thing?

A. If I were going to be doing something like that, I would probably estimate a day and a half to two days to conduct the research. It's possible I would find a solution sooner, but I certainly wouldn't promise it any sooner than that.

(Continued on next page)

Q. Do you have any reason to believe that the metadata in the Shahini warrant was altered in any way?
A. No evidence to suggest that, no.
MR. TREMONTE: No further questions, your Honor.
THE COURT: All right. It's time for our lunch break. So, ladies and gentlemen, please do not discuss the case among yourselves or with anyone. We will be back in action at 2:00. Thank you.
(Jury exits courtroom)
(Continued on next page)

THE COURT: I want to just talk about the exhibits which the parties are asking for a ruling on.

MR. TREMONTE: The witness --

THE COURT: You may step down.

With regard to 1001B, it's Jason Galanis informing Gary Hirst that on Yahoo message boards there is indications of individuals shorting the stock or thinking shorting the stock is a swell idea, as of November 26, 2010.

What is the evidentiary value of that?

MR. BIALE: Your Honor, I think it just shows consistently with Mr. Doueck's testimony and the other documents that we have submitted that Jason Galanis was continuing to tell people at Gerova that shorting the stock was the cause of the diminishment of the stock price, and that is something that we contend Mr. Hirst believed. So it's relevant to his understanding about what occurred.

THE COURT: How is that a reasonable inference to be drawn from this? He passes on two message board postings that suggests that individuals think shorting the stock is a good idea, or are shorting the stock.

MR. BIALE: I think it connects with the other documents with the fact that Mr. Hirst ordered a book on this subject and was coming up with a plan to try to deal with this short-selling problem.

It also suggests that, if Mr. Hirst were in the criminal scheme that the government alleges with Jason Galanis, there would be no reason for Jason Galanis to sending him this information. So we think it is contrary to the government's theory of Mr. Hirst's guilt.

THE COURT: Let me hear from the government.

MR. BLAIS: I am not really following that last line of argument about Mr. Galanis sending information about why the stock price is where it is. We still fail to see the relevance as to why explanations about short sellers being in the market and strategies to deal with short sellers are at all relevant to the issue of whether there was a fraudulent issuance of shares to Mr. Shahini.

THE COURT: At what point in time were the shares transferred to Mr. Shahini being sold?

MR. BLAIS: So the shares were transferred to Mr. Shahini on May 27. As your Honor may recall from the testimony of Ms. Akdeniz, they were originally deposited in a brokerage account that within a couple of weeks rejected them. So there is no trading of those shares for a period of time.

I think the first set of sales of the Shahini shares was on June 14. And if you may recall the testimony of Mr. Hinton, there was a big spike in volume on June 25, which I think the evidence would suggest was when CK Cooper, the brokerage firm that actually did allow the sales of the shares, realized that there was a large margin balance and started automatically selling the Shahini shares. So I think beginning in mid-June and continuing thereafter.

THE COURT: Until?

MR. BLAIS: Really until the shares were delisted in February of 2011. I think there is evidence, I believe it's Government Exhibit 904, which is the chart that Mr. Hinton introduced yesterday, of matched trading between the Shahini accounts and Tagliaferri and his clients that extended through January of 2011.

THE COURT: Let me ask you, is it plausible that persons in the marketplace would think that there was short selling going on?

MR. BLAIS: I think there was, in fact, some short selling of Gerova going on. I think Mr. Dalrymple, who issued the report, himself was in fact a short seller.

So I do think it is plausible for market participants to believe that there was short selling. And certainly the amount of short activity that there is, something called short interest, is I think a reported data point, one can find that on Bloomberg or other publicly available information sources. So, yes, I think that is something that would filter into the market.

THE COURT: Does the government contend that Mr. Hirst had knowledge of the manner in which the Shahini shares were being sold?

MR. BLAIS: Not specifically, no. In terms of through matched trading?

THE COURT: Through matched trading.

MR. BLAIS: Not specifically, no.

THE COURT: And the matched trading began in June?

MR. BLAIS: The matched trading, I think the evidence from Mr. Hinton was that the first coordinated trade between the Martin Kelly accounts and the Shahini accounts was on July 22, 2010.

Just to supplement my previous response, I don't believe we have direct evidence that Mr. Hirst knew the manner in which they were being sold. I think we articulated the argument yesterday, that we believe to be true, given the small public float of Gerova -- there are about 10 million shares of publicly traded, 5 million of which were held by Mr. Shahini -- that it was a reasonable assumption, or one should have known, that the only way to dispose of such a large quantity of shares, given the small public float, was through some sort of manipulative means.

THE COURT: All right. Anything else?

MR. BIALE: Your Honor, I think the whole basis that the government has asserted for the testimony of Gavin Hamels and all of the evidence about the matched trading being relevant is that that was conduct that was reasonably foreseeable to Mr. Hirst. I think his understanding that short sellers were the problem is evidence that goes to his state of mind and also shows lulling by Jason Galanis during the period --

THE COURT: Shows what?

MR. BIALE: Lulling.

THE COURT: Tell me about Exhibit 1001E.

"Rights offering. We would love to take credit, but Gary came up with what could turn out to be a great idea. We are looking into it and must talk to Bermuda counsel in the morning. If it works, we will call it Dr. Hirst's poison pill." December 1, 2010.

MR. TREMONTE: Yes, your Honor.

THE COURT: I understand, and correct me if I am wrong, the plan is for the document to walk in, in essence, on its own two feet by a stipulation. So it's not going to be the subject of testimony, as I understand it.

MR. TREMONTE: Our plan is to have our paralegal read these documents into evidence. 1001E connects with 1001L. We chose these as a representative sample. There are, in fact, dozens of e-mails that talk about the formulation of this plan to defeat the short sellers through a rights offering. That was proposed to Steve Weiss, the outside counsel at Hodgson Russ, who was, at least initially, attracted to it, proposed that it be the subject of a board vote, and referred to it as Dr. Hirst's poison pill. And I think by that it's fairly clear that he meant what corporate lawyers typically mean by a poison pill, namely, something that prevents short selling by tying up or modifying the rights of holders in some way.

THE COURT: All right. Thank you.

We are in recess. I appreciate it.

(Luncheon recess)

AFTERNOON SESSION

2:00 p.m.

(Jury not present)

THE COURT: I am exclude be 1001H. The other documents will be received.

What is left, Mr. Tremonte? Where are we now?

MR. TREMONTE: I believe the government is going to cross-examine, Mr. Shumway.

THE COURT: After that you have another witness?

MR. TREMONTE: We do. I believe we have three more witnesses. We have someone from our office who is going to read e-mails. We have Mr. Mullings from Continental Stock Transfer. And then we have Tracey Hirst. And Jan Goleszewski who is the Cayman's witness.

THE COURT: Bring our jury in.

(Continued on next page)

(Jury present)

JOHN SHUMWAY, resumed.

THE COURT: Mr. Blais.

CROSS-EXAMINATION

BY MR. BLAIS:

Q. Good afternoon, Mr. Shumway.

A. Good afternoon.

Q. Now, Mr. Shumway, you testified on direct about create date metadata in PDF files, correct?

A. That is correct.

Q. And metadata is, I think you explained, just data about data?

A. Yes, sir.

Q. It's data about the characteristics of a particular file?

A. Yes, generally.

Q. Now, create dates in a file are automatically generated correct?

A. Yes, sir.

Q. And the create date basically just borrows from the internal clock in the computer, correct?

A. In those circumstances, yes.

Q. Now, assuming there is no manipulation after the fact, whatever the computer's internal clock is set to you when the document is created is what will be reflected as the create date in the metadata, correct?

A. There are some variations for time zones, but yes.
Q. You would agree that if a document is created on a computer where the clock is set incorrect, then the metadata will be incorrect, the create date metadata will be incorrect?
A. Yes, sir.
Q. It's not particularly hard to change the internal clock of a computer, is it?
A. It can depend on the system settings.
Q. But in a Windows operating setting, it's actually pretty easy to change the internal clock on the computer, correct?
A. Again, it depends on the settings. I actually don't have the rights to change certain time settings in my computer.
Q. And that's because you're part of a networked system?
A. It's more so that we can't accidentally run a program; it's a lack of administrator rights.
Q. But that's because you're part of a corporate network, correct?
A. Sure.
Q. On your personal computer at home, it's fairly straightforward to change the internal clock of your computer, correct?
A. Yes, sir.
Q. You just have to right click on the time in the bottom right-hand corner of your screen, correct?
A. Right click and then make changes to the time zone and the

time, yes.
Q. That takes about ten seconds or so?
A. About that, yes.
Q. Maybe 20?
A. Yes.
Q. But it's not particularly difficult to change the internal clock of a computer, correct?
A. No, if you have the rights.
Q. Now, if the internal clock was changed in the ten seconds or so that it takes to change the internal clock, and then a PDF document was generated on that computer with the wrong internal clock settings, the create date of the PDF document would be wrong, correct?
A. The internal metadata, yes.
Q. Now, you testified on direct about something that would take you a day-and-a-half or two days to figure out. Do you recall that?
A. Yes, sir.
Q. That was referring to changing the metadata in a document after the document had already been created, correct?
A. Changing multiple different sets of metadata, yes.
Q. Because changing the clock before a document was created would only take about ten seconds or so, correct?
A. For the creation time, yes.
Q. It wouldn't take day-and-a-half or two days, correct?

A. No, sir.
Q. Now, the clock on a computer can also reset on its own, correct?
A. Under certain circumstances, yes.
Q. You're familiar with the CMOS battery in a computer?
A. Yes.
Q. CMOS just stands for complementary metal-oxide semiconductor?
A. Yes, sir.
Q. The CMOS is the chip in the computer that provides start-up data to the computer, like the date and time, correct?
A. Yes. It provides long-term storage; when the computer is powered down, the CMOS is actually a very low power chip.
Q. And one of the things that's included in that long-term storage is the date and time in the computer's internal clock, correct?
A. Yes, sir.
Q. And if that computer's CMOS runs dry, the battery runs out, doesn't the computer's internal clock reset?
A. Yes, sir.
Q. There is also software available to change the create date metadata in a PDF file, correct?
A. Yes, sir.
Q. Are you familiar with a software program called A-PDF INFO Changer?

A. I believe that was one of several that I did look at, yes.

Q. Are you familiar with a software program called BeCyPDFMetaEdit?

A. Not specifically that program, no.

Q. What about a software program called FileDate Changer?

A. Yes, sir.

Q. Those are all software programs that can be downloaded from the Internet, correct?

A. Correct.

Q. Those are all programs that allow the user to change various metadata in a PDF file, correct?

A. Yes, sir. In some of those I tested, it did not actually allow you to change all metadata. It allowed you to change the metadata displayed in Acrobat.

Q. Create date is one of the meta-dated pieces of information that's displayed in Acrobat, correct?

A. Specifically one of two create dates from the PDF, yes.

Q. Now, Mr. Shumway, in order to conclude that the Shahini warrant file that we have looked at earlier was created on April 9, 2010, you have to assume that the clock on the computer where the document was created was set to the correct date and time, correct?

A. Yes, sir.

Q. And you have already agreed that it's possible for the clock on a computer to be changed, correct?

MR. TREMONTE: Objection. Asked and answered.

THE COURT: I will allow it.

Q. That can take just a few seconds, correct?

A. It is possible, yes.

Q. You don't know, sitting here today, whether the clock of the computer on which the Shahini warrant document was created was set to the correct date?

A. I have no access to that computer.

Q. You haven't examined the computer on which the Shahini warrant agreement was created, have you?

A. No, sir.

Q. You have no independent evidence that the clock on the computer on which that document was created was set to April 9, 2010 on April 9, 2010?

MR. TREMONTE: Objection. Foundation.

THE COURT: No. I will allow it.

A. Correct.

Q. And defense counsel never gave you any computers to analyze, did they?

A. No, sir.

Q. Never gave you any hard drives to analyze, did they?

A. No, sir.

MR. BLAIS: No further questions.

THE COURT: Any redirect?

MR. TREMONTE: No redirect. Thank you.

THE COURT: Thank you. You may step down.

(Witness excused)

THE COURT: Call your next witness.

MS. HARRIS: We would like to read some stipulations into the record.

THE COURT: All right. That's fine.

MR. BIALE: I will read from a stipulation that has been marked as Defendant's Trial Exhibit 1300.

"It is hereby stipulated and agreed by and among Gary Hirst, the defendant, by and with the consent of his attorneys, Michael Tremonte, Justine Harris and Noam Biale, and the United States of America, by Preet Bharara, United States Attorney for the Southern District of New York, Brian Blais, Aimee Hector and Rebecca Mermelstein, Assistant United States Attorneys, of counsel, that:

"Defense Exhibits DX 300 to 305, DX 307, DX 311, DX 332, DX 334, and DX 337 are true and correct copies of records that were created, kept and maintained in the ordinary course of business of Continental Stock Transfer & Trust Company, and were created by persons with knowledge of, or created from information transmitted by persons with knowledge of, the information shown, and were created at or near the time the information became available.

"It is further stipulated and agreed by and among the parties that this stipulation and the defense exhibits set forth herein are admissible as defense exhibits in trial."

It is dated September 11, 2016, and signed the parties.

I am now going to read from Defendant's Trial Exhibit --

THE COURT: Are you offering the exhibits?

MR. BIALE: And I offer them.

THE COURT: They are received.

(Defendant's Exhibits 300 to 305, 307, 311, 332, 334, 337 and 1300 received in evidence)

MR. BIALE: I am now going to read from Defendant's Trial Exhibit 1301.

"It is hereby stipulated and agreed by and among Gary Hirst, the defendant, by and with the content of his attorneys, Michael Tremonte, Justine Harris and Noam Biale, and the United States of America, by Preet Bharara, United States Attorney for the Southern District of New York, Brian Blais, Aimee Hector and Rebecca Mermelstein, Assistant United States Attorneys, of counsel, that:

"Defense Exhibit 200 is a true and accurate copy of an e-mail from the e-mail account of Stephen Weiss with e-mail address bigshmulic@aol.com.

"It is further stipulated and agreed by and among the parties that this stipulation is admissible at trial."

It is dated September 11, 2016, and signed by the parties, and I offer the stipulation and exhibits.

THE COURT: Any objection?

MR. BLAIS: No objection.

THE COURT: Received.

(Defendant's Exhibit 1301 and 200 received in evidence)

MR. BIALE: This is Defendant's Trial Exhibit 1302.

"It is hereby stipulated and agreed by and among Gary Hirst, the defendant, by and with the consent of his attorneys, Michael Tremonte, Justine Harris and Noam Biale, and the United States of America, by Preet Bharara, United States Attorney for the Southern District of New York, Brian Blais, Aimee Hector and Rebecca Mermelstein, Assistant United States Attorneys, of counsel, that:

"Defendant's Exhibits DX 104 to 1089, DX 201 to 204, DX 207, DX 308, DX 318 to 327, DX 330 to 331, DX 335 to 336, DX 339 to 340, DX 801, DX 803 to 805, DX 1140, 1142 to 1144, DX 1000, DX 1001A, 1001B, 1001E, and 1001L, and DX 1126 to 1128, DX 1130 to 1131, and DX 1134 are true and correct copies of records that were created, kept and maintained in the ordinary course of business of Gerova Financial Group, and were created by persons with knowledge of, or created from information transmitted by persons with knowledge of, the information shown, and were created at or near the time the information became available.

"2. Defendant's Exhibit 1700 to 1702 are true and accurate copies of e-mails.

"3. Defendant's Exhibits DX 900 to 902 are true and correct copies of records that were created, kept and maintained in the ordinary course of business of Sterling Trust Cayman Ltd. and Societe Generale (Soc-Gen), and were created by persons with knowledge of, or created from information transmitted by persons with knowledge of, the information shown, and were created at or near the time the information became available.

"4. Defendant's Exhibits DX 111, DX 112, and DX 114 are true and correct copies of public records and stock certificates that were created, kept and maintained in the ordinary course of business, and were created by persons with knowledge of, or created from information transmitted by persons with knowledge of, the information shown, and were created at or near the time the information became available.

"5. Defendant's Exhibit DX 113 is a true and correct copy of records that were created, kept and maintained in the ordinary course of business of the New York Stock Exchange, and were created by persons with knowledge of the information shown, and were created at or near the time the information became available.

"It is further stipulated by and among the parties that this stipulation and the defense exhibits set forth herein are admissible as defense exhibits at trial."

It is dated September 11, 2016, and signed by the parties.

I offer the exhibits and the stipulation into evidence.

MR. BLAIS: No objection.

THE COURT: Received.

(Defendant's Exhibits 104 to 1089, 201 to 204, 207, 308, 318 to 327, 330 to 331, 335 to 336, 339 to 340, 801, 803 to 805, 1140, 1142 to 1144, 1000, 1001A, 1001B, 1001E, and 1001L, and 1126 to 1128, 1130 to 1131, and 1134 received in evidence)

(Defendant's Exhibit 1700 to 1702, 900 to 902, 111, 112, 113, 114 and 1302 received in evidence)

MS. HARRIS: The defense calls Michael Mullings.

MICHAEL MULLINGS,

called as a witness by the defendant,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: State your name and spell your full name for the record, please.

THE WITNESS: Michael Mullings, M-I-C-H-A-E-L, M-U-L-L-I-N-G-S.

THE COURT: You may inquire.

DIRECT EXAMINATION

BY MS. HARRIS:

Q. Good afternoon, Mr. Mullings.
A. Good afternoon.
Q. Can you tell me where you work?
A. Continental Stock Transfer & Trust Company.
Q. What is your position there?
A. I am currently the chief compliance officer and corporate secretary.
Q. How long have you worked at Continental?
A. Over 20 years.
Q. Can you tell me a little bit of your educational background after high school?
A. I have a master's degree from the New Jersey Institute of Technology. And I have a bachelor's degree from the University of West Indies.
Q. Can you tell the jury briefly how a stock transfer company like Continental works?
A. A stock transfer company has many roles. Mainly, what we do is we keep the records of all the shareholders of the company, the registered shareholders. There are other functions, which includes the issuance of shares on the authorization of a company officer or board resolutions, or we are involved in the transfer of securities, meaning the shares are held by John Smith and it needs to be transferred to Mary Smith, the certificate needs to be presented to us for cancellation and we will reissue a new certificate.

Q. Is the information maintained by Continental available to the companies that use Continental --
A. Yes.
Q. -- for that purpose?
A. Yes.
Q. Is Continental a source of information for those company representatives?
A. Yes.
Q. Is there a time of year when Continental gets more frequent requests for information from company representatives?
A. Usually most public companies have public filings. So they will request certain information quarterly or at the fiscal year end.
Q. So they request information usually in connection with filings that they have to make?
A. Yes.
Q. I want to show you what has been in evidence as Government Exhibit 508.

Hopefully in a minute or a few seconds it will pop up on your screen. If it doesn't, I have a paper copy.

What is this document?
A. It's a controls for the company which shows changes in the outstanding shares.
Q. How regularly is this kind of document updated by Continental?

A. Every time that there is a change. So if there is an issuance or a cancellation, anywhere there is a change an entry is made.
Q. Now, I would like to show you what is in evidence as Defense Exhibit 301.
Do you recognize this form of document?
A. Yes. This is a registered shareholders list.
Q. Is this a document maintained by Continental?
A. It's generated by Continental.
Q. Created and maintained by Continental?
A. Yes.
Q. You said the names on the list are registered shareholders, correct?
A. Correct.
Q. Drawing your attention to, I think it's the ninth line down, Cede & Co.
A. It's actually Cede & Co.
Q. Can you explain what that entry means?
A. Cede & Co. is the nominee name for Depository Trust Company, and those are street-held shares, meaning shares held on behalf of beneficial holders by brokers and banks.
Q. So that row there, Cede & Co. (Fast), collects the number of shares held, but held in street name, correct?
A. Correct. The shareholders are not listed on our records. As a transfer agent, we have no access to brokerage accounts,

and so we do not know who the actual owners of the stock is. This account just represents those shareholders.

Q. Drawing your attention to the column marked "issued" all the way over to the right, can you indicate or explain to the jury what "COM" means under issued?

A. It's just an abbreviation for common stock that we generally use.

MS. HARRIS: Mr. Pollock, if you could show the bottom of the document.

Q. Towards the tomorrow there are other abbreviations. Do you see the "WTS"?

A. Yes.

Q. Can you explain what that means?

A. That's an abbreviation for warrants.

Q. Finally, there is one entry with the indicator of "unit"?

A. That's what it is, a unit.

Q. Can you explain to the jury what a unit is?

A. A unit is a security that generally has a component feature; it comprises of common stock and warrants. So a shareholder of a unit will be able to separate the units, if they choose, into common shares and warrants, and there is usually a separate.

Q. We talked about how quickly Continental updates the common master sheet in Government Exhibit 508. Whenever a share issuance is made by Continental, is this chart, Defense Exhibit

301, is that chart also updated?
A. Well, it will change -- the next day, if this report was run again, then you will see the change in it, yes.
Q. So just to be clear, within a day of issuing the shares, the information is updated?
A. Yes. Whenever transactions are done during the day, there is a batch job that's done overnight and it updates. It will update the accounts to generate this list.
Q. Are you familiar with a company by the name of Gerova?
A. Yes.
Q. Was Gerova a client of Continental's in 2010?
A. Yes.
Q. So this information that we are looking at on Defense Trial Exhibit 301 is, in fact, the registered shareholders list for Gerova as of May 15, 2010, is that right?
A. That is correct.
Q. As you discussed previously, this chart is also a chart that's available to company representatives upon request, correct?
A. Correct.
Q. Now, can you tell the total number of restricted shares from looking at this chart?
A. Not from this list, no.
Q. Does Continental have other records that keep track of the total number of restricted shares?

A. You can generate reports that reflect restricted numbers, yes.
Q. Now, I would like to take a look at Government Exhibit 500.
MS. HARRIS: I'm sorry. If you could just keep up Defense Exhibit 301 for a minute.
Q. Just looking again at the Cede & Co. entry on the ninth line, it shows, if you run your hand all the way over to the right, it shows the total number of shares held in street name and it says 282,917, correct?
A. Yes.
MS. HARRIS: Now, if we can take a look at Government Exhibit 500.
If you can turn to the first page after the e-mail.
Q. This was a letter received by Continental, correct, in May of 2010?
A. Yes.
Q. Requesting the issuance of 5,333,333 shares?
A. Yes.
Q. Now, I would like to look at Defense Exhibit 304.
Taking a look at line 9 again -- I think it's line 9, Cede & Co. (Fast) -- withdrawn.
This is the Gerova Financial Group's registered shareholders list as of May 27, 2010, correct?
A. That's correct.
Q. Taking a look at Cede & Co., the ninth line down, and

running your hand all the way to the right-hand column, it now lists 5,617,050 shares, correct?
A. That's correct.
Q. Is it fair to assume that that reflects the share issuance that we just looked at in the May 26 letter regarding 5,333,333 shares?
A. Yes, that makes sense, yes.
Q. This report of May 27, this report would also have been available to any representatives from Gerova, correct?
A. That's correct.
Q. Before I leave this topic, if we could just skip back to Government Exhibit 500.
MS. HARRIS: May I have one moment?
THE COURT: Yes.
Q. So just going back to the letter, we talked about the issuance of shares, but looking at the bottom of the letter, it indicates to whom the shares should be delivered, correct?
A. Yes.
Q. And it includes the name of Ymer Shahini?
A. Yes.
Q. So though it's delivered to a brokerage house, the name is contained in this letter, is that right?
A. The account name is identified, yes.
Q. And this letter is also maintained in the files of Continental, correct?

A. That is correct.
Q. And this letter and any related documents would also be available to a company representative, correct?
A. Yes.
Q. Thank you.
Now, I would like to take a look at Defense Exhibit 323.
Starting on the third page -- it's a four-page document.
MS. HARRIS: If I may, your Honor, approach with a paper copy for the witness?
THE COURT: That will be fine. Thank you.
Q. Beginning at the bottom of page 3 -- in fact, the entire content of page 3, that reflects correspondence between individuals at Continental and an individual at Gerova, is that correct?
A. Correct.
Q. The information requested, I believe in the middle of page 3, is the number of shareholders, correct?
You see the middle of the page?
A. Yes. Correct.
Q. And that's dated July 14, 2010, correct?
A. Correct.
Q. Then turning to page 2, you see a woman by the name of Vivina Mendez e-mails Mr. Hlavsa information concerning common

holders, new unit holders, warrant holders and new warrant holders.

Is this kind of correspondence typical of the kind of request that Continental receives from company representatives?
A. We get various requests and this is consistent with that.
Q. Then Mr. Hlavsa asked for the number of shares, not shareholders, and whether he can get the number that are restricted.

That's information that Continental has as well, correct?
A. Yes. We could provide that report, yes.
Q. Then on page 1, you see an e-mail at the bottom of the page from Vivina Mendez to Mr. Hlavsa, and she provides the issued and outstanding shares. And then she offers to run a report to ascertain the number of restricted shares.

Is that the kind of report you were discussing earlier where Continental can identify the number of restricted shares?
A. Yes.
Q. Then if you could just read the e-mail at the top where it begins "Vivina"?
A. It says, "Thank you. Please run the report and also can I have the shareholder listing for each month in 2010? That way I can see the shares as they are issued and canceled."
Q. That's from Michael Hlavsa, correct?
A. Correct.

Q. So is running the reports per month also something that Continental can do for a company representative?
A. If requested, yes.
Q. Now I am going to show you Defendant's Exhibit 348.
MR. TREMONTE: Again, may I approach, your Honor? It's a multipage document.
THE COURT: You may.
Q. If you could turn to the second page.
Now, does Continental have a secure messaging or communication system set up for its customers or its clients?
A. Yes.
Q. So are some of the reports that we have been talking about delivered through that secured communication system?
A. Yes.
Q. And this e-mail, these e-mail correspondence that you see reflected on page 5, is it your understanding that some of these e-mails are communicated through the secured client communication system?
A. Yes.
Q. Now, can you just read the e-mail at the top that's from Nancy Gavilanes to m.hlavsa@gerova.com?
A. The second page?
Q. Strangely, there is a page 5 at the bottom, but the second page of the exhibit.
A. It says, "Attached are the shareholders list from April to

June. Please advise as of what date do you need the restricted list and are we sending both reports on a monthly basis or only the shareholders list?"

Q. That e-mail indicates there are three attachments?

A. Yes.

Q. That e-mail that you just read, it indicates in the attachments line that there are three Excel spreadsheets attached, correct?

A. Yes.

Q. Then turning to the next page of the exhibit, that's one of the spreadsheets that was attached, correct?

A. Yes.

Q. This is one of the shareholder lists of the kind that Continental maintains, correct?

A. Yes.

Q. And it has the written date 4/30/10 at the bottom?

A. Yes.

Q. Do you have it?

A. Yes.

Q. Then turning to the next page, that's the second spreadsheet that was attached to that e-mail, correct?

A. Yes.

Q. And this is the shareholder report as of May 31, 2010, correct?

A. Correct.

Q. Again, looking at the line --

MS. HARRIS: Can we blow this up a little bit, Mr. Pollock? Thank you.

Q. Looking at the line again Cede & Co. (Fast), and moving all the way over to the right, it shows the number of shares held in street name, correct?

A. Yes.

Q. And that's 5,617,050?

A. That's correct.

Q. Then, finally, turning to the next page, that's the third spreadsheet that was attached to that e-mail to Mr. Hlavsa, correct?

A. Correct.

Q. That's the shareholder list as of June 30, 2010?

A. Correct.

Q. Thank you. I am going to turn our attention now to Defense Exhibit 324.

MS. HARRIS: Again, if I may approach, your Honor?

THE COURT: You may.

Q. Drawing your attention to the middle of page 1, you see there is an e-mail again from Vivina Mendez to Michael Hlavsa and it's cc'd to Alexandra Albrecht?

A. Yes.

Q. And in that e-mail she says, "We do not have anyone set up to receive the month end reports for Gerova. However, I will inform the department who handles these requests to include you as the receiver of the reports going forward."

Let me ask you, does Continental sometimes send regular month end reports to some companies who request it?

A. Yes.

Q. Are all of the reports that Continental maintains available to be sent to a company on a regular basis?

A. They are available, but they usually request whatever it is they want.

Q. Is it possible for a company to ask for automatic receipt of month end reports?

A. Yes.

Q. That would be the shareholder list that we just looked at?

A. Yes.

Q. Thank you.

MS. HARRIS: One moment, Judge.

Your Honor, just so the record is clear, I believe Defense Exhibit 348 may not have been covered by the stipulation. It was provided to the government in advance. I now offer it to the extent it wasn't officially offered by stipulation.

THE COURT: Any objection?

MS. HECTOR: Your Honor, may I just locate it?

THE COURT: You may.

MS. HECTOR: That's fine. No objection.

THE COURT: Received.

(Defendant's Exhibit 348 received in evidence)

Q. Turning your attention, if I could, to Defense Exhibit 300.

MS. HARRIS: Again, your Honor, just for the witness's convenience, I am going to hand him a paper copy.

Q. Mr. Mullings, do you recognize this document?

A. Yes.

Q. It's from the files of Continental?

A. Yes.

Q. Can you explain for the jury what this document is?

A. It's a resolution that provides the appointment of Continental Stock Transfer to act as transfer agent and registrar for the issuant.

Q. You understand this to be the terms under which Continental is appointed to be the transfer agent?

A. Yes.

Q. These are essentially the terms by which Continental must abide by contractually with the company?

A. Yes.

Q. If you could look at the paragraph that's Roman numeral 2?

A. OK.

Q. Could you just read that paragraph from the beginning, please?

A. "That the transfer agent and registrar be and hereby is authorized to issue, register, and countersign certificates of said stock of this corporation in such names and for such numbers of shares up to the full amount of such stock which is authorized but unissued and to deliver such certificates and/or book entry positions as may be directed by resolution of the board of directors or by written order of the president or a vice president and secretary or assistant secretary or treasurer and an opinion of counsel in form and substance satisfactory to it and such other documentation as it may require."

Q. Just to break this down a little bit, with the phrase beginning by "as may be directed by resolution of the board of directors," is this the instruction as to who can issue instructions with respect to share issuances to Continental?

A. Yes.

Q. Do you understand this language to authorize such issuance by either a resolution of the board of directors or a written order of the president?

A. Written order of the president or a vice president and secretary and assistant secretary, yes.

Q. So there are actually four different options as to how share issuances can be authorized?

A. I'm not sure I understand the question.

Q. It could be authorized by a resolution of the board of directors?

A. Right.

Q. Or a written order of the president?
A. Written order of any authorized officer. And that includes the president or a vice president and secretary and treasurer.
Q. But either-or is sufficient?
A. Yes.
Q. If you could turn to page 3 of that document.
There is a signature at the bottom there and that's over the line for secretary, correct?
A. Yes.
(Continued on next page)

BY MS. HARRIS:
Q. I don't know if you can recognize that signature. Do you recognize that signature or can you read it?
A. I assume it's Michael Hlavsa, however you pronounce his name.
Q. The rest of the document might be able to help us out. If we turn to page --
A. I recognize him as the secretary, so I assume that's him.
Q. -- page 6 of the document, please.
A. It looks likes the same signature, yes.
Q. We're waiting for the computer to catch up with your paper copy.
A. I'm sorry.
Q. Well, first, that page there -- right. You see Michael Hlavsa's signature next to him name, correct?
A. Yes.
Q. On the page right before that, see a signature next to the name of Gary Hirst?
A. Yes.
Q. Then turning back to page 1. Do you see this is a resolution for the board of directors of the Asia Special Situation Acquisition Corp., right?
A. Yes.
Q. Do you have an understanding as to the relationship between ASSAC and Gerova?

A. ASSAC was the original company that existed as a SPAC, a special purpose acquisition corporation, that went under a merger and changed their name to Gerova Financial.
Q. Are you aware of any subsequent or new set of instructions to Continental from the Gerova entity?
A. I'm not aware of one, no.
Q. You reviewed the Gerova files in the possession of Continental before testifying here today, correct?
A. Correct.
Q. Is it your understanding that share issuances were issued for Gerova Corporation pursuant to the company resolution of the ASSAC that we just looked at, Defendant's Exhibit 300?
A. Yes.
Q. Thank you.
MS. HARRIS: I'd like to take a look at Defendant's Exhibit 301.
Q. We've looked at this before, but this time I just want to draw your attention to a few lines below CEDE & Co. You see the name Gary Hirst?
A. Yes.
Q. Moving all the way over to the right, you see the number of shares issued under his name?
A. I can't see the right column. It's 125.
Q. I'd be happy to bring you a paper copy if that helps.
A. No, I can see now.

Q. Okay. And it's 125,000, correct?
A. Correct.
Q. Again, this is the shareholders list as of May 15th, 2010, correct?
A. Correct.
Q. Also, just looking at the top line of the shareholders list, it has, under "name", Allius Ltd. The first line of "address" says "Attention Gary Hirst".
A. Yes.
Q. Do you understand what that means if a shareholder's name is attention to somebody else?
A. Well, the shareholder is listed in the first column, and the attention is just usually there if it's a corporation -- well, "usually" is probably the wrong word -- but on occasion, an individual name will be put there so if there's a mailing, it goes to that particular individual. That's usually requested when the shares are issued.
Q. The number of shares held in that corporate entity is 500,000 as of 5/15/2010, correct?
A. Correct.

MS. HARRIS: Your Honor, I offer Defendant's Exhibit 345 and 346. It wasn't ready in time for the stipulation, but I believe there's no objection.

MS. HECTOR: No objection.

THE COURT: Received.

(Defendant's Exhibits 345 and 346 received in evidence)

MS. HARRIS: If I could approach and have these documents put in front of the witness?

THE COURT: You may.

BY MS. HARRIS:

Q. If you could take a moment just to look at the email and the attached letter that's Defendant's Exhibit 345.

A. Okay.

Q. Is this a letter correspondence received by Continental?

A. Yes.

Q. Can you explain, from looking at the email, what the communication concerns?

A. I assume that a certificate was presented in the name of Allius Ltd. for transfer to Zasis, LLC and Noble Investment Fund Ltd., and that an opinion of counsel is requested because the shares were restricted. And that's what the email communication is providing, that legal opinion.

Q. Let's take a look at Defendant's Exhibit 346. You have multiple copies of it, but it's only one page.

A. Okay.

Q. Does that show the splitting up the Allius shares between Zasis, LLC and Noble Investment Fund Ltd.?

A. Yes.

Q. What is this form of document, Exhibit 346?

A. It's called a daily transfer journal. What it is is it's an activity report on every transaction that occurs, in this case for Gerova on October 13th, 2010.
Q. Thank you. You can put the document down.
Did there come a time when there was a reverse stock split for Gerova?
A. Yes. It was declared in November of 2010, I believe. It became effective in November, 2010.
Q. Do you remember what the stock split was?
A. It was one for five.
Q. One for five. Can you just explain what that means to the jury briefly, a stock split, a reverse stock split?
A. In general, it's what we call a corporate action. In general, issuers will declare a stock split in order to improve the price of the stock. That's essentially what the reason is.
So what happens is, on the effective date of the stock, the price will jump by whatever that rate is. So if it was $1 a share on November 10th, and the effective date was November 11th, on that date the stock price would be corrected on the market to $5.
Q. So if you're a shareholder on the day of a reverse stock split, the price per share will go up, but your number of shares will go down?
A. Right. The one for five means the number of shares at face value number of shares that you hold will be reduced by that

rate. So if you had 100 shares, and it was a one for five split, it would reduce to 20 shares. But because the price also increased five for one, the overall value of the shares would remain the same.
Q. Thank you.
Now I'd like to take a look at Defendant's Exhibit 302 already in evidence. This is a Gerova registered shareholder list as of August 29th, 2016, correct?
A. Correct.
Q. First of all, let me ask you. This is a two-page document.
MS. HARRIS: Your Honor, if I may approach and hand up a paper copy?
THE COURT: Yes.
MS. HARRIS: Thank you.
Q. Turning your attention to page 2, over in the right-hand column -- second to last right-hand column before the number of shares, you see on page 2 it has the indicator "new", n-e-w?
A. Yes.
Q. Could you explain to the jury what that means?
A. Whenever there's a reverse split, Continental creates a new issue to segregate what we call the on exchange presplit shares subject to the one for five split in this case and shares that have already underwent the one for five split. So all of the shareholders listed under the "new" category would have been shares that would have been -- it would have gone through the

one for five split.

THE COURT: That's an internal designation; is that right?

THE WITNESS: That's correct.

THE COURT: Thank you.

Q. So three lines down, or I guess it's four lines technically, you see the row with Gary Hirst's name?

A. Yes.

Q. Your records show that as of August 29, 2016, he had 25,000 shares of new post reverse split shares, correct?

A. Correct.

Q. And that's one-fifth of the 125,000 number that we saw as of May 15, 2010, correct?

A. Correct.

Q. So same number of shares since May, 2010.

A. It's the post split equivalent of those shares, yes. The same shares.

Q. Looking down at the line where it says "Noble Investment Fund Ltd."

A. Yes.

Q. The address now for Noble is an address in Switzerland, correct?

A. Yes.

Q. Again, Noble Investment Fund has 50,000 new or post split shares, correct?

A. Correct.
Q. And that's one-fifth of 250,000, correct?
A. Right.
Q. Finally, looking at the bottom of the list, we see Zasis, LLC?
A. Yes.
Q. And Zasis has 50,000 of the new post reverse split shares, correct?
A. Correct.
Q. Again, one-fifth of 250,000.
A. Correct.
MS. HARRIS: You can take down that exhibit. I'd like to take a look at Defendant's Exhibit 303, please, already in evidence.
Your Honor, if I may approach with my last paper exhibit to hand to Mr. Mullings?
THE COURT: Yes.
Q. Do you see Defendant's Exhibit 303?
A. Yes.
Q. That's a letter from Continental, correct, to Dr. Gary Hirst?
A. Correct.
Q. It appears to enclose stock certificates, correct?
A. Yes.
Q. Is it Continental's practice to also issue stock

certificates to shareholders upon request?
A. Yes.
Q. This is a letter sent by your company; is that right?
A. That's correct.
Q. Take a look at Defendant's Exhibit 111. This, in fact, is the stock certificate referenced in the letter for Zasis, LLC for 50,000 shares, correct?
A. Correct.
Q. Then turning to Defendant's Exhibit 112. That is a stock certificate in the name of Gary Hirst for 25,000 shares, correct?
A. Correct.
MS. HARRIS: If I could have a moment, your Honor?
THE COURT: You may.
(Pause)
MS. HARRIS: No further questions. Thank you.
THE COURT: You may cross examine.
MS. HECTOR: Thank you, your Honor.
CROSS EXAMINATION
BY MS. HECTOR:
Q. Mr. Mullings, if we could just start by picking up exactly where we just left off with those two stock certificates you were looking at. That's Defendant's Exhibit 111 and 112.
MS. HECTOR: I'll just open up this ELMO for a second. Ms. Sheinwald, could we toggle to the ELMO?

Q. Mr. Mullings, is this what you were just looking at, the stock exhibit, Defendant's Exhibit 111, to Zasis?
A. Yes.
Q. Could you just look at the second page, which appears to just be a photocopy of the back of that document? I can just zoom in. Is this indication at the bottom what's referred to as a restrictive legend on this stock certificate?
A. Yes.
Q. Let me just put up on the ELMO 112.
THE COURT: Could you put that back up, please, for one moment?
MS. HARRIS: I'm sorry.
THE COURT: Thank you.
Q. Let me just put on the ELMO 112, which we just looked at, which was the stock certificate to Gary T. Hirst. While we're on this, could I just focus your attention, Mr. Mullings, on the address provided for Mr. Hirst? Could you read that for us?
A. It's 1515 International Parkway, Suite 2031, Lake Mary, Florida, 32746.
Q. Again, turning to the photocopy of the back page, is this certificate also labeled with what's referred to as a restrictive legend?
A. Yes.
Q. Your understanding of a restrictive legend, correct, is

that it's restricted from sale, from free trading?

A. It's restricted from transfer of any kind without authorization, which is either the shares being registered or there's an available exemption under the Securities Act. So it's not free to trade it, or freely transferable.

MS. HECTOR: Ms. Sheinwald, could we pull up Defendant's Exhibit 300?

Q. Do you see that on your screen, Mr. Mullings?

A. Yes.

Q. Mr. Mullings, you were asked on direct about this document. This is essentially the contract, right, between Continental and, its indicated, Asia Special Situation Acquisition Corp., right?

A. Yes.

Q. Ms. Harris focused you in on this second paragraph here.

MS. HECTOR: Ms. Sheinwald, could we pull that up one more time, II? Could we pull it out so that it -- yes. Thank you.

Q. Mr. Mullings, fair to say that what this paragraph indicates is who at Asia Special Situation Acquisition Corp. is authorized to direct you, Continental, to issue shares, right?

A. Yes.

Q. Just to be clear, this has nothing to do with the bylaws of the corporation, Asia Special Situation Acquisition Corp., right?

A. No.

THE COURT: I'm sorry?

MS. HARRIS: Objection, your Honor, foundation.

THE COURT: Overruled.

If you know. Do you know the answer to the question?

THE WITNESS: Yes.

THE COURT: Okay, thank you.

Q. This is purely who is authorized under this contract to give a direction to you, Continental, to cause the issuance of shares, correct?

A. Yes.

Q. And we focus in on this paragraph II, to see who does it say can direct the issuance of shares? I think that is explained in the third line of this, so let's just focus in on that. "may be directed by resolution of the board of directors." So that's one way, right?

A. Yes.

Q. Now let's talk about the second way. "Or by written order of the president." That's the second way, right?

A. Yes.

Q. So we're back to "written order of a vice president, and secretary, or assistant secretary, or treasurer." So am I correct that a third way is written order by a vice president, and, either secretary, assistant secretary, or treasurer; is that right?

A. It can be interpreted that way, yes.
Q. Now let's look at page 3 of this document.
MS. HECTOR: Could we focus in on that section under D? Thank you.
Q. One way was the resolution of the directors. We don't have the board of directors listed here, right?
A. No.
Q. The other is by the president. Who is the president listed here?
A. That would be Gary Hirst.
Q. So Gary Hirst is authorized under this contract to cause Continental to issue shares, right?
A. That's correct.
Q. What is his address that we see here?
A. 1515 International Parkway, Suite 2031, Lake Mary, Florida, 32746.
MS. HECTOR: We can take that down, Ms. Sheinwald. Thank you. Can we pull up Defendant's Exhibit 304? That's not here. I'll just pull it up on the ELMO. I think you may have it up there.
THE WITNESS: 304 you said?
Q. Yes. So Mr. Mullings, this is one of the shareholders lists we looked at during your direct testimony.
A. Yes.
Q. Just to be clear, am I correct that Continental has the

information that is reflected in a document like this, but this kind of document isn't created unless it's requested; is that right?
A. That's correct.
Q. Now, there is a line on this document called CEDE & Co., right?
A. Yes.
Q. Am I correct that CEDE & Co., that line on this document, encompasses potentially multiple shareholders, right?
A. Correct.
Q. So if John Smith, for instance, holds shares of Gerova in a brokerage account at Merrill Lynch, he doesn't appear on this list as John Smith, he appears on this list under the CEDE number?
A. He's a part of that number, yes.
Q. Looking at this document, you can't tell who the particular shareholders are who make up that number, right?
A. No. We have no access to that information.
Q. In fact, Continental doesn't even maintain information about who makes up that CEDE & Co. number, right?
A. That's correct.
Q. In fact, isn't it true that even if Continental wanted to get that information, it might not be able to get all of that information?
A. We couldn't, no.

Q. So if someone were to request that information from Continental, you don't even have it.
A. No. We have no access to that.
Q. Ms. Harris asked you questions about whether it's possible for a company to get regular monthly shareholder reports from you. Do you remember that?
A. Yes.
Q. Isn't it true that it's, frankly, pretty rare for a company to receive monthly shareholder reports from you like that.
A. I wouldn't use the word "rare", but it's not the norm.
Q. Isn't it true that only about 25 percent of your client companies receive monthly shareholder reports?
A. Approximately. Maybe lower than that. Approximately, yes.
MS. HECTOR: Ms. Sheinwald, could we pull up Government's Exhibit 200 -- sorry -- 500? Could we look at page 2 of that document?
THE COURT: I think the machine is tired and is telling us that we should take our mid-afternoon break, so that's what I propose we do. We'll be back in action in 10 minutes.
(Recess)
THE COURT: You may continue.
MS. HECTOR: Thank you, your Honor.
BY MS. HECTOR:
Q. Good afternoon again, Mr. Mullings.

So we have up on the screen what is in evidence as Government's Exhibit 500, page 2. And Mr. Mullings, if you could just take a look for a second at this letter to familiarize yourself with it again.
A. Okay.
Q. Sometimes Continental requires that its client company provide an attorney opinion letter in connection with an issuance, correct?
A. We always require it.
Q. So you always require that, in addition to the letter, there is some sort of attorney opinion letter also provided, correct?
A. Correct.
Q. In addition to the information that a company provides to Continental about who can cause share issuances, do companies also typically provide Continental with a list of company counsel from whom you can accept attorney opinion letters?
A. Yes.
Q. If a company wants Continental to rely on an opinion letter that is not from one of the attorneys on that list, can they request for Continental to rely on that other attorney's letter?
A. Yes.
MS. HECTOR: Can we focus in on the third paragraph of this letter?

Q. Could you read that to us?
A. It says, "Please also consider this authorization to rely on the attached legal opinion provided by Barry Feiner, Esq. in connection with the free transferability of the shares which should be delivered without restriction."
Q. So by this paragraph, is it your understanding that Mr. Hirst is asking Continental to rely on this other attorney's opinion, Barry Feiner, in connection with this stock issuance?
A. Correct.
Q. If we just turn to two more pages in this document. Is this a letter to Continental Stock Transfer & Trust Company from the attorney that was referenced in the letter from Gary Hirst, meaning attorney Barry Feiner, Esquire?
A. Yes.
Q. Just looking at the first paragraph, is this opinion letter concerning shares issued to Ymer Shahini?
A. Yes.
MS. HECTOR: That is all I have. Thank you, your Honor.
THE COURT: Any redirect?
MS. HARRIS: Just one moment, your Honor. Thank you.
(Pause)
MS. HARRIS: Just two questions, Mr. Mullings. Might be three. I apologize.

REDIRECT EXAMINATION

BY MS. HARRIS:

Q. If we could take a look at Government's Exhibit 500. It was just up on the screen.

Looking again at this letter, I think Ms. Hector was asking you about whether or not it was possible for Continental to figure out the individual shareholders who held the shares in street name under the CEDE & Co. list, correct?

A. Yes.

Q. I understand your testimony was that it's impossible for Continental to determine who holds the shares in the street name, correct?

A. Yes.

Q. But just so we're clear, this information -- this letter that contains Ymer Shahini's name was maintained and available to company representatives, correct?

A. Yes.

Q. So even though you can't necessarily know everyone who has the shares in CEDE & Co., if a company representative had a question about a specific issuance, or any issuance, this document would be available to them, correct?

A. Correct.

MS. HARRIS: Nothing further, Judge.

THE COURT: You may step down. Thank you, sir.

THE WITNESS: Thank you.

THE COURT: You may call your next witness.

MR. BIALE: Thank you, your Honor. The defense calls Jan Golaszewski.

JAN GOLASZEWSKI,

called as a witness by the Defendant,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: State your full name and spell your full name for the record, please.

THE WITNESS: My name is Jan Golaszewski. J-a-n, G-o-l-a-s-z-e-w-s-k-i.

THE COURT: You may inquire.

DIRECT EXAMINATION

BY MR. BIALE:

Q. Good afternoon, Mr. Golaszewski.

A. Good afternoon.

Q. Where do you work?

A. I work at Carey Olsen, which is a law firm -- in their office in Grand Cayman in the Cayman Islands.

Q. What's your position there?

A. I'm a partner of the firm, and I'm head of the litigation and insolvency departments in the Cayman Islands office.

Q. Can you just briefly explain for the jury, what is litigation insolvency?

A. Of course. So litigation is when companies or individuals sue each other in the Cayman Islands court. Insolvency is when

the companies get into financial difficulties and there's either restructuring or the companies are liquidated and their assets are sold off.
Q. This may be somewhat of a repeat, but what's your general area of practice?
A. So it's, as I say, litigation insolvency involving Cayman Islands companies and in the Cayman Islands courts.
Q. Can you give us a brief summary of your educational background?
A. Yes. I was born and brought up in London. Went to secondary school in London, and then I went to Oxford University where I studied law. I had obtained a First Class degree in law at Oxford University in England. I then studied a legal practice course in Nottingham. I then started working with Freshfields, which is one of the four biggest English law firms, where I did my training contract. I worked with Freshfields in London and in Hong Kong, and I moved to the Cayman Islands in 2008.
Q. How long have you been working at Carey Olsen?
A. I've been working at Carey Olsen two years in the Cayman Islands. Previous to that, I worked for a law firm called Maples and Calder in the Cayman Islands.
Q. How long have you been a partner of the firm?
A. I've been a partner for two and a half years.
Q. At Carey Olsen, what are some of the representative matters

that you've handled?

A. So I am currently acting for a company who is suing its former directors for fraud. I'm acting for investors in a hedge fund who are trying to get their money out of the hedge fund. I'm acting for liquidators suing their former auditors for auditor negligence. That's a general review of the caseload I've got at the moment.

Q. Have you published any articles or books?

A. No books, but I regularly publish articles in journals, mainly to do with insolvency. There's one called Insol, I-n-s-o-l, and also some of the offshore legal publications.

Q. Have you ever testified in a trial before?

A. I haven't testified and given oral evidence at a trial before, but I have acted as an expert witness in Cayman Islands law in other matters.

THE COURT: Ladies and gentlemen of the jury, as I understand it, this witness is not being proffered as an expert on Cayman Islands law, and for that reason will not be opining on any issue of Cayman Islands law. Is that correct?

MR. BIALE: That's correct, your Honor.

THE COURT: Okay. Go ahead.

Q. Are you being paid for your testimony here?

A. My law firm is being paid, yes.

Q. Who is paying your law firm?

A. The defense.

Q. And how much have you been paid so far?
A. My firm was paid a $10,000 retainer.
Q. How much work have you done up to this point?
A. I think we've done around $20,000 worth of work.
Q. Does your compensation depend in any way on the outcome of this case?
A. It does not.
Q. Do you know anything about the charges or the underlying conduct in this case?
A. I've read the indictment and I've read a number of the corporate documents that have been shown to me.
Q. We're going to get to some of those documents, but I just first want to ask you a few general questions about corporations in the Cayman Islands.
How are Cayman Islands corporations structured?
A. It's normally either a company or a partnership.
Q. What's a company?
A. So a company has got shareholders which own the company, and they own shares in the company, and then there are also directors who are the essentially the management of the company.
Q. And do those companies generally have officers?
A. Yes. They would have executive officers like secretaries, or the company secretary or directors as an officer.
Q. What about a CEO or chief executive officer?

A. One of the directors could be assigned as a chief executive officer. The sort of head of the directors is the chairman. That's the term that we would use in the Cayman Islands.
Q. What about a CFO, a chief financial officer?
A. Yes. You could have a chief financial officer who could be a director or may not be a director, it very much depends.
Q. What does the chief financial officer typically do?
MS. MERMELSTEIN: Objection, your Honor.
THE COURT: I'm going to allow it. Go ahead.
THE WITNESS: Chief financial officer is in charge of the finances of the company, and that would be their designated role.
Q. Are you familiar with corporate documents that govern companies that are incorporated in the Cayman Islands?
A. Yes. Those would be the memorandum and articles of association of the company.
Q. So what is a memorandum and article of association?
A. It's essentially the constitution of the company. It's the rules that govern how the company operates, what the company can do, what the shareholders can vote on, when they should vote, what the directors' powers are, and when the directors will vote. And it's also a contract between the company and the shareholders.
Q. What about board resolutions?
A. So a board resolution is -- a board is the collective noun

for a group of directors, for all the directors together. And when they get together and resolve or decide on something, that is recorded in a document which is called a board resolution.

Q. I'd like to go through some documents with you now, and I've left paper copies for you.

MR. BIALE: I'm going ask Mr. Pollock to pull them up. So Mr. Pollock, if you could first pull up Defendant's Exhibit 104 in evidence.

Q. Taking a look at the front of in document, Mr. Golaszewski, what is this?

A. This is a copy of memorandum and articles of association of Asia Special Situation Acquisition Corp.

Q. Is this a typical kind of document?

A. Yes, it is. This is what the memorandum and articles of association of a Cayman company would generally look like, although for each company the content is different.

(Continued on next page)

Q. Just taking a look at the top, can you read the first two lines at the very top?
A. "The companies law (2004 revision) of the Cayman Islands."
Q. What is that reference?
A. The companies law is the statutes in the Cayman Islands that governs the law of companies. It's based on the English companies law. And the 2004 revision -- it's revised from time to time to keep up-to-date with developments. The 2004 revision means that this was the company's law which was revised in 2004 and was in place at the time that these memorandum and articles of association were put into place.
Q. So we are going to look at a few provisions of these documents. We don't have a way to blow them up so I have prepared some PowerPoint slides. But I will ask you to just look at the pages of the documents.
MR. BIALE: Mr. Pollock, if you can pull up the first PowerPoint slide.
Q. I am just going to ask you, actually, about the second piece of this first.
Turning your attention to page 3 of Defendant's Exhibit 104.
A. Yes.
Q. Do you see that provision? It's called "issue of shares"?
A. Yes.
Q. Can you just read that?

A. "Issue of shares. Subject to the provisions, if any, in the memorandum (and to any direction that may be given by the company in general meeting) and without prejudice to any rights attached to any existing shares, the directors may allot, issue, grant options over, or otherwise dispose of shares (including fractions of a share) with or without preferred, deferred or other rights or restrictions, whether in regard to dividend, voting, return of capital or otherwise and to such persons, at such times and on such other terms as they think proper."

Q. Can you just summarize what that means in plain English?

MS. MERMELSTEIN: Objection, your Honor.

THE COURT: Well, ladies and gentlemen, you will recall that Nazan Akdeniz was called by the government and testified and gave some general background and understanding of some documents. She was not tendered as an expert witness and was not allowed to offer opinions.

Well, this witness is in the same position and is not allowed to offer opinions. But if you're simply asking for a summary of what was read, I am going to allow that question to be answered.

MS. MERMELSTEIN: May we approach?

THE COURT: No.

What is your understanding of what this provision says?

THE WITNESS: It gives the directors discretion and allows them the power to issue shares, essentially.

THE COURT: Next question.

MR. BIALE: Thank you, your Honor.

BY MR. BIALE:

Q. I am going to turn your attention back to page 3, but for those of us watching on the screen, it's just right above.

Do you see a definition of directors?

A. Yes.

Q. What does that say?

A. "Directors means the directors for the time being of the company."

Q. Now, if I could turn your attention to Government Exhibit 200.

MR. BIALE: If you could pull up Government Exhibit 200, just briefly.

Q. Do you have that document in front of you, Mr. Goleszewski?

A. I do.

Q. What is this document?

THE COURT: Government Exhibit 200.

A. This is the second amended and restated memorandum and articles of association of Gerova Financial Group, Ltd.

Q. Why would there be a second amended memorandum?

A. A company from time to time may amend its articles and change the terms that they are in as long as those changes are agreed by the shareholders. And so this would be the amended memorandum and articles of association. It's called second because the original is the first.

Q. And you see the last line of text there. There is a date. Can you read that last line?

A. "Adopted by special resolution passed on 19 January 2010 and effective on blob January 2010."

Q. Presumably blob, it's a placeholder for a date?

A. I would presume so, yes.

Q. What is a special resolution?

A. There's two kinds of resolutions shareholders can pass. One is ordinary resolution, one is special resolution.

Ordinary resolution is a 50 percent majority. A special resolution normally means a 75 percent majority, or that can be changed in the articles, but certainly more than 50 percent.

Q. And just to be clear, this would be a resolution of the shareholders, not of the board of directors?

A. Correct.

Q. Now, I am going to ask you to look at some provisions in the documents.

MR. BIALE: Mr. Pollock, if you could pull up the next PowerPoint slide.

Q. Mr. Goleszewski, while we are waiting for that to come up, if you could look at page A8 of the document.

Just turning your attention to the provision that says "issue of shares."

I am not going to ask you to read the whole thing aloud, but if you could just look at it and let us know if that looks the same to you as the provision in the prior memorandum.
A. Yes, it looks very similar, yes.
Q. Now, if you could turn back to A5.

MR. BIALE: Mr. Pollock, if you could go to the next slide.
Q. Can you read that definition to us?
A. "Directors means the directors for the time being of the company, or as the case may be, the directors assembled as a board or as a committee thereof."
Q. Is that different from the definition we saw before?
A. Yes.
Q. How is it different?
A. It extends the definition to the directors as a collective group. So it means --

MS. MERMELSTEIN: Objection, your Honor.

THE COURT: Sustained. Answer stricken.

Next question.
Q. If you could turn to page A21 of your document.

MR. BIALE: Mr. Pollock, if you could go to the next slide.
Q. I am just going to ask you to read that provision to us.

A. "Presumption of assent. A director of the company who is present at the meeting of the board of directors at which action on any company matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent from such action with the person acting as the chairman or secretary of the meeting before the adjournment thereof or shall forward such dissent by registered post to such person immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action."

Q. Can you just briefly summarize that provision?

MS. MERMELSTEIN: Objection, your Honor.

THE COURT: I think it pretty much stands for itself.

What does registered post mean?

THE WITNESS: Registered post means something similar to, say, DHL. It's something where the sending and the receipt of the post is recorded. So not just putting it into the ordinary post, where there is no stamp, but actually where you could record the date you sent it and the date it was received.

THE COURT: What does assent mean?

THE WITNESS: Assent means voting positively for the resolution.

THE COURT: So assented means agreed with or voted for?

THE WITNESS: Correct. Yes, your Honor.

THE COURT: Thank you.

Next question.

BY MR. BIALE:

Q. If you could turn, Mr. Goleszewski, to page A22.

MR. BIALE: Mr. Pollock, if you could go to the next slide.

Q. This one is a little longer. So if you could just have you start reading and then I may ask you to stop.

A. "Delegation of directors' powers. The directors may delegate any of their powers to any committee consisting of one or more directors. They may also delegate any managing director or any director holding any other executive office such as their powers as they consider desirable to be exercised by him provided that alternate director may not act as managing director and the appointment of the managing director shall be revoked forthwith if he ceases to be a director."

Q. I think that's good. Thank you.

Let me turn your attention to the next document, which is Government Exhibit 210.

MR. BIALE: Mr. Pollock, if you could pull up the next slide.

Q. Mr. Goleszewski, this document is Bates stamped -- I'm going to ask you to look at it -- RKGF010354.

A. Yes, I have it.

Q. Is this a different type of document from what we have been looking at so far?

A. Yes. We have been looking at the articles of association and this is a resolution of the board of directors.

Q. On the top, what does that reflect there?

A. It has the name of the company and then it says, Written resolutions of the board of directors of the company dated 25 March 2008.

Q. I am just going to ask you to read the first resolution that is -- it's going to be the second resolution on your page, but the first resolution that's blown up here.

A. "Resolved, that any of the proper officers of the company be, and each of them acting singly hereby is, authorized, empowered and directed for, in the name and on behalf of the company or any of its subsidiaries, to take any and all actions, to negotiate for, to enter into all agreements, perform all such further acts and things, to execute, file, deliver or record in the name and on behalf of the company and, if requested or required, under the company's corporate seal, all such certificates, agreements, instruments or other documents, and to make all such payments as they in their judgment or in the judgment of any one or more of them, may deem necessary or advisable in order to carry into effect the purposes and intent of, or consummate the transactions contemplated by the foregoing resolutions, and/or all of the transactions contemplated therein or thereby, the authority therefor to be conclusively evidenced by the taking of such action or the execution and delivery of such documents."

Q. I am going to have you stop there. That one is a little long. So if you can just summarize it for us briefly.

MS. MERMELSTEIN: Objection.

THE COURT: I am going to sustain that.

The defense has no burden in this case. They need not do anything. But a party who wishes to raise a point of foreign law has a process for doing that and requesting the court to instruct the jury on the point of foreign law. So there is a process for that. That process has not been invoked in this case. So that's where we are.

I do have one question that arises from the plain reading. What does the phrase "foregoing resolutions and/or all of the transactions contemplated therein or thereby" refer to, if you know?

THE WITNESS: I would take that to mean the resolutions in this document and the transactions that are contemplated by those resolutions. So it's referring to this document as a whole.

THE COURT: Thank you.

Next question.

BY MR. BIALE:

Q. If I could just have you read the -- before I do that, can

you just tell us, when it says "resolved," what does that mean?
A. It means decided. It means that that's the board's decision that they have voted upon.
Q. Thank you.
Now, if I can have you read the second resolution.
A. "Resolved, that all actions heretofore taken by the officers, directors, or agents of the company relating to the foregoing matters and resolutions be, and they hereby are, approved, adopted, ratified and confirmed in all respects as if they had been done pursuant to specific authority granted to them by the board of directors."
Q. Thank you.
Now, I am going to have you take a look at Defense Exhibit 106.
MR. BIALE: Mr. Pollock, if you could pull up the next slide.
Q. Do you have that document in front of you?
A. Yes.
Q. The jury now has the first page in front of them.
What is this document?
A. This, again, is similar to the last document. It's a written resolution of the directors of the company. And it's dated 15 January 2010.
Q. Underneath that, where it says "extraordinary general meeting of shareholders," what is that?

A. So there is an annual general meeting of the shareholders. So once a year the shareholders get together and decide on things. And if there is another meeting of shareholders that is not the annual general meeting, it's called an extraordinary general meeting.

Q. Can you just see from the front of this document what the purpose of the extraordinary general meeting was?

A. Yes. It's in 1.1(a).

It says, "The meeting has been called for the purpose of considering and, if thought fit, passing and approving the following resolutions."

And then there ask a list of the resolutions.

Q. Do you see where it says "by ordinary resolution that the following acquisitions by ASSAC be approved"?

A. Yes.

Q. And in part (c) below, that lists a particular acquisition. Can you see what that acquisition is?

A. Yes. It's defined as the Wimbledon agreements.

MR. BIALE: Mr. Pollock, if you can go to the next slide.

Q. Mr. Goleszewski, if you could look at the next page of your document just read the (b) and (d).

A. "It is resolved that each of Marshall Manley, Gary Hirst, Tore Nag, Michael Hlavsa, and Keith Laslop be designated as an authorized signatory (as defined below) of the company."

Q. Can you tell us what authorized signatory means?

MS. MERMELSTEIN: Objection, your Honor.

THE COURT: I am going to allow the witness to answer that question.

What does authorized signatory mean.

THE WITNESS: It's defined in the paragraph below in (c), and it means, essentially, somebody who is authorized to sign on behalf of the company.

THE COURT: Thank you.

Q. Now, if you can read subsection (d).

A. "Each of Gary Hirst and Michael Hlavsa, with full power or substitution, be designated as proxies named by the director in said proxy statements."

Q. I'm sorry. I think we have something different there.

If you can go forward to page 5 of your document. The subsection (d) that's on the slide is actually the subsection (d) that's on that page. It's 4.2(d).

A. "Each of Marshall Manley, Gary Hirst, Tore Nag, Michael Hlavsa and Keith Laslop be designated as an authorized signatory of the company in order to sign the Wimbledon agreements or any ancillary document."

Q. What is an ancillary document?

A. That's defined, I think, in the body of this resolution, and it means, essentially, a document that is supporting the main documents in the agreements.

Q. Now, if you can read subsection (f).

A. "The company do give, make, sign, execute and deliver all such ancillary documents, including the management agreements and registration rights agreement with Weston, as may in the sole opinion and absolute discretion of the directors or any attorney or authorized signatory be considered necessary or desirable for the purpose of compliance with any condition precedent or the coming into effect of or otherwise giving effect to, consummating or completing or procuring the performance and completion of all or any of the transactions contemplated by or referred to in the Wimbledon agreements, and the company do all such acts and things as might in the opinion and absolute discretion of the directors or any attorney or authorized signatory be necessary or desirable for the purposes stated above."

MR. BIALE: Mr. Pollock, if you can go to the next slide.

Q. Mr. Goleszewski, if you can advance to page 7 of your document.

Now we are in Section 7.2. There are some further resolutions. If you can just read subsection (b).

A. "It is resolved that the issuance of such preferred shares and ordinary shares be approved, in such amounts and to such persons as may be provided for in the foregoing agreements and any ancillary documents each as may be approved by an authorized signatory, provided, however, that such amount shall not exceed 1 million preferred shares and 175 million ordinary shares (including ordinary shares issuable upon conversion of the preferred shares) without the further consent and approval of the directors."

Q. Just on subsection (d), does that look similar to you as the provision that we just read?

A. Yes, it does.

Q. Lastly, in this document --

MR. BIALE: Mr. Pollock, if you can advance to the next.

Q. -- you see there is a Section 9.1. If you could just read the heading for Section 9 on page 8 of your document?

A. The heading is "general authorization."

Q. I am not going to ask you to read all of 9.1, but is that similar to the provision that we saw earlier that the Court asked you about regarding doing acts in furtherance of the foregoing resolutions?

A. Yes, I think so.

Q. Section 10, is that similar to the "ratification of prior actions" provision we saw before?

A. Yes.

MR. BIALE: We can go to the next slide, please.

Q. This we are going to cover very briefly. If you could look at Defense Trial Exhibit 105, Mr. Goleszewski.

A. Yes.
Q. What is that document?
A. This is the third amended and restated memorandum and articles of association of Gerova Financial Group, Ltd.
Q. What is the effective date on that one?
A. The effective date is 19 May 2010.
Q. Just turning your attention to page 4 of the document and the provision that's up on the PowerPoint now, is that the same provision regarding issue of shares that was in the previous memorandum?
A. Yes, I think so.
MR. BIALE: We can go to the next slide.
Q. Is directors defined in the same way as it was in the prior document?
A. Yes, as defined in the second amended articles of association.
MR. BIALE: We can skip to the next slide.
Q. Same presumption of assent provision? It's on page 20 of your document.
A. Yes, I think so.
MR. BIALE: The next slide.
Q. The same delegation provision on page 21 of your document?
A. Yes.
Q. Let's go to the slide. If I could have you look at Government Exhibit 222.

What is this document?

A. So these are minutes of a meeting of the board of directors of Gerova Financial Group, Ltd., dated 6 October 2010.

Q. If I could just have you look on the second page, the "ratification of shares" portion, which is blown up on the jurors' screen and have you read that.

A. "Ratification of share issuances. Gary Hirst presented to the board of directors of the company the warrants and shares that have been issued in connection with settlement agreements with TAG Virgin Islands, Inc., Ymer Shahini and Oxbridge Group LLC.

"Thereupon, after full discussion and upon motion duly made, seconded and unanimously carried, it was resolved that the board of directors does hereby ratify the warrants and shares issued to TAG Virgin Islands, Inc., Ymer Shahini and Oxbridge Group LLC in connection with settlement agreements."

Q. Thank you.

MR. BIALE: You can take down the PowerPoint presentation, Mr. Pollock.

Q. We are just going to look at a few more documents.

In connection with this case, did you also look at statutory documents for a company called Pennine Investors, Ltd.?

A. Yes.

Q. What are statutory documents?

A. So those, again, are the memorandum and articles of association or resolutions passed by the shareholders or the board of directors.

MR. BIALE: If you can pull up Defendant's Trial Exhibit 900A.

Q. You have it in front of you?

A. I do.

Q. Just so we are clear, again, these are not documents for Gerova, these are for a separate company, right?

A. Yes. It says that it's a register of members of Pennine Investors, Ltd.

Q. If you can take a look -- first of all, what is a register of members?

A. So this is a list of all of the members or shareholders -- it means the same thing -- of a company, and it would list what shares they held, when they became a member or shareholder, and when they ceased to be a member or shareholder.

Q. Do you see there's two tables there and in the second table it says "management shares"?

A. Yes.

Q. What are management shares?

A. So management shares -- normally, with an ordinary share, it's one share, one vote. But with management shares, they often have super voting rights in order to allow the holders of those shares to maintain control of the management of the

company. So, for example, they might have ten votes per share.
Q. The first row in that second table, what is the member name?
A. Hirst International Asset Advisory Ltd.-Anguilla.
Q. How many shares does that member hold?
A. Zero.
Q. Then on the next row, who is that member?
A. Hirst International Asset Advisory Ltd.-British Virgin Islands.
Q. How many shares does that member hold?
A. Zero.
Q. Do you see on the right side there is a narrative?
A. Yes.
Q. Can you just read from 31 October 2006?
A. "31 October 2006. Transfer of ten management shares from Hirst International Advisory Ltd.-British Virgin Islands to Axiat, Inc. for the total consideration of U.S. dollars 0.01."
Q. Now, can you take a look at Defense Exhibit 900C?
A. Yes.
Q. Is this a continuation of the register of members for Pennine Investors, Ltd.?
A. Yes, I believe so.
Q. The first row, what is the member name?
A. Axiat, Inc.
Q. How many shares does Axiat, Inc. hold?

A. Zero.
Q. Now turning your attention to Defense Exhibit 900B.
A. Yes.
Q. What is this document?
A. This is a register of directors and officers of Pennine Investors, Ltd.
Q. Do you see six lines down where it says Gary Hirst?
A. Yes.
Q. What does that reflect?
A. So that reflects that Gary Hirst became a director on the 28th of July 1998, and he resigned as a director on the 27th of February 2010.
Q. Do you see at the bottom Gary Hirst is again listed. What does that state?
A. It states that Gary Hirst was appointed as president on 18 May 2001.
Q. What is president?
MS. MERMELSTEIN: Objection, your Honor.
THE COURT: I don't think that requires an explanation, unless it's a legal opinion, which in any event it's inadmissible.
Next question.
Q. If you can take a look at Defense Exhibit 900D.
A. Yes.
Q. What is this document?

A. So this is a written special resolution of the management shareholders of Pennine Investors, Ltd., dated 27 February 2010.
Q. If I could have you read the first two resolutions, please.
A. "Resolved, that the three existing directors be and they hereby are removed as directors of the company.
"Resolved, that the following be and he hereby is appointed as the sole director of the company until such time as his successor be elected or appointed.
"Arie Jan Van Roon, Care of Transtax, LLC, World Trade Center, Via Lugano 6982, Lugano, Switzerland."
Q. We are going to look at one more document, which is Defense Exhibit 900F.
A. Yes.
Q. What is this document?
A. This is a unanimous written resolution of the sole director of Pennine Investors, Ltd., dated March 2, 2010.
Q. If you could just read the first resolution.
A. "Resolved, that the request to transfer of all of the management shares of the company from Axiat, Inc. to Pure Glow Finance (BVI) is hereby approved."
MR. BIALE: No further questions.
THE COURT: You may cross-examine.
MS. MERMELSTEIN: Nothing for this witness, your Honor.

THE COURT: You may step down. Thank you.

(Witness excused)

THE COURT: Call your next witness.

MS. HARRIS: We call Ashling Walsh who will read defense exhibits to the jury.

We have prepared binders for the jury and your Honor. We have provided one to the government already.

THE COURT: Is Ms. Walsh going to be providing any testimony or is she just reading from documents?

MS. HARRIS: Purely reading.

THE COURT: Then no oath is required.

MS. HARRIS: I apologize. We didn't prepare enough for the court reporter and all the jurors.

THE COURT: You can have mine and I can read it on the screen.

ASHLING WALSH

DIRECT EXAMINATION

BY MS. HARRIS:

Q. Beginning with Defense Trial Exhibit 1700, and drawing your attention to the body of the e-mail in the center of the page, could you read for the jury to whom this e-mail is addressed, the from line and the date, please?

A. The e-mail is from Ymer Shahini, ymer@europe.com, to jmg@sentinellawgroup.com, date March 31, 2009.

Q. If you could read the e-mail beginning with the "dear" line

and the first two sentences of the e-mail, please.
A. "Dear Jared, in FIFA's club, overseeing Zurich, I believe this was one of the best and most fruitful meetings I had recently. Their words 'this whole project now depends on you and your seriousness about moving forward, you may count on our full support' are still echoing in my mind."
Q. If you could drop down to the lend of the e-mail and read the sentence that begins "I believe."
A. "I believe that momentum is great; the fact that we have no competition in this area gives us the upper hand. However, the most important fact and what was stressed in the meeting as well is that we have to act fast, ASAP. Thanks, Ymer."
Q. Now turning to Defense Trial Exhibit 1701.
Again, drawing your attention to the middle of the page, if you could read for the jury the from, date and to line, please.
A. E-mail from Ymer Shahini to jmg@sentinellawgroup.com, date March 11, 2009.
Q. If you could read the passage in the middle of the e-mail that begins with "once again."
A. "Once again you're talking to highest level possible through this right hand -- delegate & Min. of Technology, this is best I can do from my side. It is unlikely that anyone could do better at this stage. Your team should persuade them about proven technology, quick. Results and outline clear

co-operation strategy while proposing an action plan who needs what to deliver and by when. Thanks, Ymer."

Q. Turning to Defendant's Trial Exhibit 1702, which is a two-page document, and beginning on the second page.

The section that begins with "original message," if you could read the from, to and date on that e-mail, please.

A. E-mail from Galanis2008@gmail.com to Ymer Shahini, date Tuesday, the 5th of May 2009.

Q. The subject line, please.

A. "Re: Forward: Kosovo Investment Promotion Event."

Q. If you could read that e-mail beginning with the name Ymer.

A. "Ymer, thanks for being on top of this. I can only push so hard at this end as they are fighting battles for survival every day. I have recommended seriously that someone be at this meeting. I will let you know my progress. Dekes."

Q. Now, flipping back to the first page, you see the section near the bottom that begins with "forwarded message." If you could read the from, date and to line in that e-mail, please.

A. E-mail from Ymer Shahini to Galanis2008@gmail.com, date Tuesday, May 5, 2009.

Q. If you could read the e-mail that follows?

A. "Deks, regardless of this event, a separate meeting down here could happen any time you want, with following: Prime Minister, Minister of Environment, Minister of Finance and Economy, Minister of Energy and Mines.

"In addition to this, your team will be meeting with private landowners where deposits are. This is confirmed and awaiting your signal to schedule it. Please let me know what is outlook from your side.

"Thanks, Ymer."

Q. Then turning back to the first page, with the section of the e-mail chain that begins "From: Galanis2008," if you could read the from, date and to line in that e-mail.

A. E-mail from Galanis2008@gmail.com to jason@holmbycompanies.com, Jesse Galanis, jmg@sentinelLawgroup.com, support, support@sentinellawgroup.com, date May 6, 2009.

Q. And the e-mail body, please.

A. "Guys, the world is ours."

Q. Now, I would like to turn to Defense Trial Exhibit 1000.

Just drawing your attention to the section that says "items ordered."

If you could read immediately following 1.

A. "How the shorts raid your stock and destroy your company and what to do about it, Esq. John Lux and Bradley E. Essman."

Q. And the shipping address?

A. "Gary T. Hirst, 1515 International Parkway, Suite 2031, FYV Consulting, Inc., Heathrow, FL 32746-7635, United States."

Q. And the date of shipment beginning with "shipped on"?

A. "Shipped on November 26, 2010."

Q. Now, flipping to the Defendant's Trial Exhibit 1001A.

If you could just read the top four lines of this document.

A. E-mail from Jason G, jason@holmbycompanies.com, to Gary Hirst, sent Monday, November 1, 2010, Subject: 18 Underperforming Financial Stocks Being Targeted by Short Sellers-Seeking Alpha."

Q. Turning to 1001B, please.

You could just read the top, from, sent, to, subject line in order, please.

A. E-mail from Jason G (jason@holmbycompanies.com), to Gary Hirst, sent Friday, November 26, 2010, Subject: Yahoo! Message Boards-Gerova Financial Group, Ltd. Is anyone not shorting this pig?"

Q. I am now turning to Defense Trial Exhibit 1000E.

If you could read the top four lines for the jury, please.

A. E-mail from Stephen Weiss (sweiss@hodgsonruss.com), to jason@holmbycompanies.com, Gary Hirst and Shant Chalian, sent Wednesday, December 1, 2010, and the subject is right offering.

Q. If you could read the body of the e-mail, please.

A. "We would love to take credit, but Gary came up with what could turn out to be a great idea. We are looking into it and must talk to Bermuda counsel in the morning. If it works, we will call it 'Dr. Hirst's poison pill.' Stay tuned."

Q. If you could turn to Defense Exhibit 1001L, please.

It's a three-page document. If you could turn your attention to the bottom of page 2, at the bottom of the chain under the line, if you could read the from, sent and to line, please.

A. E-mail from Shant Chalian to Brad Adderley, CC: Stephen Weiss, Eric Pinero, Gary Hirst, sent Thursday, December 2, 2010.

Q. And the subject, please.

A. The subject is "special dividend."

Q. If you could just read the first two sentences of that e-mail.

A. Brad, Gerova is interested in issuing to all of its shareholders a special dividend. The dividend would be payable to all ordinary shareholders as of a set record date and would consist solely of a right to purchase one ordinary share at a future date, the effective date of the registration statement approximately July 2011."

Q. If you could continue to finish the rest of that paragraph.

A. "The right would be exercisable at some discount, yet to be determined, to the market price of the ordinary shares as of such date. Each ordinary share outstanding as of the record would be entitled to receive one right. While not a poison pill, the idea would be to distribute this right in the same manner that poison pills are normally distributed."

Q. Turning back to page 1 of that e-mail.
The e-mail in the middle of the page from Chalian, Shant, if you could just read the from, sent, and to line, please.
A. E-mail from Shant Chalian to Brad Adderley, Stephen Weiss, Gary Hirst, Eric Pinero, Jason Galanis, lucasmann@gerova.com, sent Tuesday, January 11, 2011, and subject, Re: Special Dividend.
Q. If you could read that first paragraph.
A. "As per Gary Hirst, we are to move forward with the special dividend. Accordingly, I would ask Brad to prepare a written consent to be signed by all of the directors, in lieu of which the matter may instead be discussed at a formally called meeting of the board."
Q. If you could read the last sentence in that section of the e-mail.
A. "All, this means that we will have to advise NYSE of the dividend. This cannot be done without noticing them. Thanks."
Q. Thank you.
Turning your attention to Defense Trial Exhibit 1126.
If you could read the from, to and sent line, please.
A. E-mail from jason@fund.com to Arie Van Roon (avr@transtaxllp.com) and Gary Hirst, sent Saturday, January 30, 2010.
Q. If you could read the two paragraphs, essentially three

sentences, beginning with "we really need."

A. "We really need Master Trust distribution for Gerova to support Gerova's life settlement policy business. They said they're doing 2-plus million dollars a month. Would be enormous for Gerova. What's the status?"

Q. Now, let's turn to Defendant's Exhibit 1127.

If you could read the from, sent and to lines, please.

A. E-mail from jason@fund.com, to Jack Doueck (jd@stillwatercapital.com), Rick Rudy (rrudy@stillwatercapital.com)

Q. If you could read the first sentence of that e-mail.

A. "The Master Trust docs represent and warrant that there is 475 million euro and 30 million euro redeemable now, and therefore liquid."

Q. Now, let's turn to Defense Trial Exhibit 1130.

If you could read the from, sent and to line, please.

A. E-mail from jason.galanis@nobleinv.com, to Lou Kreisberg (lou@loukreisberg.com), Elliot Bertram (ebertram@madisonpartnersny.com), and Lucas Mann (l.mann@me.com), sent Wednesday, June 2, 2010, and subject GSC.

Q. If you could read the first two lines beginning with "gentlemen."

A. "Gentlemen, Arie Van Roon, on behalf of Noble and Master Trust, is prepared to provide proof of funds to GSC, and to move ahead with the SPA. Closing would have to be three

weeks."
Q. Thank you.
Turning now to Defendant's Trial Exhibit 1134.
If you could read the from, sent and to line there, please.
A. E-mail from Jason G (jason@holmbycompanies.com), to l.mann.me.com Mann, sent Wednesday, April 28, 2010.
Q. And the e-mail begins with "Jack," but then if you could skip down to the seventh paragraph, if we can call it that, and just read the phrase that begins with "also."
A. "Also, we have Master Trust liquidity."
Q. Who signs the e-mail?
A. Jason.
Q. Now, turning to Defense Trial Exhibit 1144, which is a two-page document.
Beginning on the second page at the bottom, if you could read the from, sent and to line in that e-mail.
A. From jason.galanis@nobleinv.com, to Rick Rudy, sent Tuesday, May 11, 2010, subject Re: Stillwater Files.
Q. If you could read the few lines that begin with "I'm going to focus."
A. "I'm going to focus elsewhere. 70 million euro in liquidity at Master Trust and control of Weston and a Harcourt joint venture, and a Bank of New York venture."
Q. If you can just read the end of the e-mail beginning with

"sorry."
A. "Sorry. It's a sad day for me. Jason."
Q. Then moving to the top of the page with the e-mail that begins with Jason colon, if you could skip down and read the phrase that begins with "you know."
A. "You know that Jack and I would do just about anything you ask us to do."
Q. Then continue to read the rest of that e-mail.
A. "I'm asking you to not walk away. My e-mails have one purpose: To protect myself from someone who keeps rattling a sword in my face. We need you here and the sooner the better."
Q. Turning back to the first page of Defendant's Exhibit 1144, if you could read the from, date, and to line underneath the section that begins "begin forwarded message."
A. E-mail from Jason G (jason@holmbycompanies.com), to Joe Bianco (j.bianco@aya.yale.edu), May 11, 2010.
Q. If you could just read the entire e-mail, please.
A. "Joe, I wanted to forward you this private e-mail so you can appreciate why I am not able to go forward with GFC. My risk assessment is that I am walking into a certain trap. I'm going to work on Master Trust. It's where the money is anyway. Jason."
Q. Now, I would like to turn to Defense Trial Exhibit 1143.
MS. HARRIS: I'm sorry, your Honor. I think this e-mail is largely duplicative of the e-mail before.

THE COURT: Thank you.

Q. So now we are going to turn to Defendant's Trial Exhibit 901A.

If you could begin, Ms. Walsh, by reading the from, sent and to line on the top of this e-mail, please.

A. E-mail from Terence Thorpe (terence.thorpe@socgen.com), to Old Gary, cc: Pierre-Alain Pesenti, Peter Pattschull, sent Friday, February 5, 2010, Subject: Subscription of SG Private Banking (Suisse) S.A. in Global Asset Fund Ltd.

Q. If you could just read the body of the e-mail message, please.

A. "Dear sir, please find the subscription documents executed in favor of SG Private Banking (Suisse) S.A. with reference: Wimbledon. Thank you for confirming us the good reception. Best regards, Terence Thorpe."

Q. Turning the page to the first page of the attachment, if you could read the passage that begins -- the few lines that begin with "subject" in the middle of the page.

A. "Subject: Global Asset Fund Ltd.

"We are confirming the following subscription reference: Wimbledon.

"U.S. dollars 5 million.

"For the trade date: February 1, 2010.

"Value date for the payment: February the 5th, 2010.

"The subscriber is SG Private Banking (Suisse) S.A."

Q. Thank you.

Then turning the page to the next document that's attached to that e-mail, still in Defendant's Exhibit 901A.

If you could read just the title of the document that's centered in large capital letters in the beginning.

A. "Application form for shares, minimum subscription, $1 million."

Q. Right above that, please.

A. "Global Asset Fund Ltd."

Q. If you could just read the first few lines of the first paragraph.

A. "The undersigned subscriber (the subscriber) hereby subscribes for $5 million (the subscription amount) of class A shares (the shares) of Global Asset Fund Ltd. (the company), par value $0.01, in accordance with the terms of the confidential offering memorandum, dated 1 January 2008 (the memorandum) and of the memorandum of association and the articles of association of the company (as the same may be amended from time to time). Subscriber agrees to pay the subscription amount by bank telegraphic transfer from:

"SG Private Banking (Suisse) S.A., blank (name of bank), for value no later than three business days prior to the date that subscriber requests the shares be issued."

Q. Thank you.

The rest of the pages we can skip and go ahead to

Defendant's Trial Exhibit 1140.

If you could just read the from, sent and to line, please.

A. E-mail from Jack Doueck (jd@stillwatercapital.com), to Marshall Manley, Old Gary, CC: Joe Bianco, sent Sunday, March 21, 2010.

Q. If you could just skip down to item number 6 -- I'm sorry. If you could read the subject line, please.

A. "Subject: Proposed agenda items for board meetings 4/7-4/8 Bahamas."

Q. If you could skip down to item number 6 and read that.

A. "Financial services acquisitions. Master Trust, Seymour Pierce, CSI-RIA's, others."

Q. Thank you.

Now turning to 901B, please.

If you could read the from, sent, to and subject line, please.

A. E-mail from Terence Thorpe (terence.thorpe@socgen.com), to Old Gary, sent Tuesday, February 23, 2010, Subject: Global Asset Fund Limits/Subscription $5 million, Societe Generale Private Banking (Suisse).

Q. If you could just read the short e-mail that's contained in that message.

A. "Good afternoon, regarding our subscription in the above-mentioned fund, could you please confirm us that the trade date of February the 1st 2010 was accepted?

"Thank you in advance. Best regards, Terence Thorpe."

MS. HARRIS: Can I have one moment, Judge? I'm sorry.

THE COURT: You may.

MS. HARRIS: Can I have a moment to confer with the government?

THE COURT: Yes.

(Pause)

MS. HARRIS: There was a current e-mail in here that was unmarked, but it turns out already to be a government exhibit, and we are going to, for the record, remark the next page, which is Bates number GTH717, as Defendant's Exhibit 1307. And I now offer it, your Honor.

THE COURT: Any objection?

MS. MERMELSTEIN: No, your Honor.

THE COURT: All right.

(Defendant's Exhibit 1307 received in evidence)

Q. If you could read the from, sent and to line here, please.

A. E-mail from Gary Hirst to Lyn McFadden (lmcfadden@vensurefcu.org), Sherri Farrell (sfarrell@vensurefcu.org), sent Friday, April 30, 2010, subject wire to Soc-Gen.

Q. If you could just read the message in this e-mail, please.

A. "Please send the following wire from the Pennine Investors, Ltd. (1064) account and confirm when sent. Thanks, Gary."

Q. And the amount please?
A. Amount, $2,375,000.
Q. And the receiving bank just below the ABA number.
A. Societe Generale, New York.
Q. Thank you.
Now turning to the Defendant's Exhibit 901C.
If you could read the from, sent and to line, please.
A. E-mail from Terence Thorpe (terence.thorpe@socgen.com), to Old Gary, sent Thursday, June 3, 2010, subject: Request of Redemption in Global Asset Fund Ltd.
Q. If you could just read the entire e-mail, please.
A. "Dear Gary, please find enclosed our request of redemption which represents our total holdings in the above-mentioned fund. Best regards, Terence."
Q. Thank you.
Turning now to the first page of the attachment, if you could just read below the line where it says "subject."
A. "Subject: Global Asset Fund Ltd.
"We are confirming the following redemption:
"939,66534 shares.
"For next trade date May 31, 2010."
Q. Actually, go ahead, you can read the next line.
A. "Please pay proceeds of the redemption to the following instructions:
"Societe Generale New York."

Q. That's fine. We will skip the banking details.

Now turning to Defense Trial Exhibit 1142.

The bottom e-mail, I think, is the same message in the e-mail that we just read in 901C.

Starting above that one, if you could read the from, date and to line there, please.

A. E-mail from Gary Hirst (gary@hirstlaw.com), to jason@holmbycompanies.com, date Thursday, 3rd June 2010, Subject: Forward request of redemption in Global Asset Fund Ltd.

Q. Then if you could read the one line in the message, please.

A. "Weston redemption request for May 31."

(Continued on next page)

BY MS. HARRIS:

Q. Then could you read the top of the email, please, of Defense Trial Exhibit 1142, the FROM, SENT, and TO line.

A. Email from Jason@holmbycompanies.com, to Old Gary, sent Thursday, June 3rd, 2010. Subject, "Re: request of redemption in Global Asset Fund Ltd".

Q. Could you please read the one line in that message?

A. "Master Trust I suppose in a few weeks!"

Q. Thank you. If you could now turn to Defense Trial Exhibit 901D. Skipping some of the computer code, if you could read the FROM, SENT and TO line in that email, please?

A. Email from Gary Hirst, to Lynn McFadden, lmcfadden@vensurefcu.org, Sherri Farrell, sfarrell@vensurefcu.org. Sent Tuesday, June 22nd, 2010. Subject, "Wire to Soc-Gen".

Q. If you could just read the body of the message of the email, please.

A. "Please send the following wire from the Pennine Investors Ltd account number 1064 and confirm when sent. Thanks! Gary."

Q. And the amount, please?

A. $2,620,000.

Q. And the name of the receiving bank under the ABA code?

A. Societe General, New York.

Q. And the originator to beneficiary information?

A. Global Asset Fund. Ltd.

Q. Thank you.

One last email, Ms. Walsh. Thank you. Defense Trial Exhibit 901E. If you could read the FROM, SENT, and TO line in that email, please.

A. Email from Gary Hirst to Terence Thorpe, sent Tuesday, June 22nd, 2010. Subject, "Re: request of redemption in Global Asset Fund. Ltd".

Q. Then, if you could read the body of the email, please, at the top.

A. "Dear Terence. Global Asset Fund has this afternoon wired $2,620,000 to your account. A redemption would have been for September 30, so the fund has instead refunded your subscription. This represents full and final payment. Regards, Gary."

MS. HARRIS: Thank you, your Honor. Nothing further.

THE COURT: Mr. Tremonte, what remains?

MR. TREMONTE: One additional witness. The direct will be approximately five minutes or less.

THE COURT: Ladies and gentlemen, if you'd like, we can do that now, that will be the last witness in the case, or if you'd prefer, we could do it on Monday morning. Anybody object to doing it now?

JURORS: No objections.

THE COURT: All right. Wow. You can take my job. Thank you. I'll give an advanced preview.

On Monday morning, what will happen is, I anticipate we will have closing arguments from each side. The lawyers will have an opportunity to sum up and tell you what they believe the evidence has shown. The summations themselves are not evidence.

On Monday, your lunch will be provided for you. You'll get menus from Flo on Monday morning to select what you like.

After the conclusion of the closing arguments, I will deliver my instructions to you on the law, and then you will have the case to deliberate on. I should tell you that you need to keep an open mind until you hear it all. Okay?

The weekend is coming up, we're not going to sit tomorrow, so it's important that you follow that instruction to not discuss the case among yourselves or with anyone, and to not do any research on your own. That would be unfair to one side or the other or both sides. You wouldn't want that if it were your family, so please, don't do that. All right?

Mr. Tremonte.

MR. TREMONTE: Your Honor, the defense calls Tracey Hirst.

TRACEY HIRST,

called as a witness by the Defendant,

having been duly sworn, testified as follows:

THE DEPUTY CLERK: Please state your name and spell it for the record, please.

THE WITNESS: Tracey Hirst. T-r-a-c-e-y, H-i-r-s-t.

THE COURT: All right. Sit back in the chair and relax.

THE WITNESS: Thank you.

THE COURT: As long as the microphone is close enough. That's the only thing I ask.

Go ahead.

DIRECT EXAMINATION

BY MR. TREMONTE:

Q. Tracey, I have to ask this question for the record. Do you know Gary Hirst?

A. Yes. He's my dad.

Q. Is your father in the courtroom today?

A. I'm kind of short. Yes.

Q. Can you just point him out, please?

A. He's in the back row.

THE COURT: Identification noted. Go ahead.

MR. TREMONTE: Thank you, your Honor.

Q. How old are you, Ms. Hirst?

A. I'm 28.

Q. Where do you live?

A. I live in Orlando Florida.

Q. How long have you lived there?

A. Most of my life.

Q. Do you live alone?
A. No, my dad lives with me.
Q. Just you and your dad?
A. Yes.
Q. For how long have you lived there with your dad?
A. In Orlando, or just with my dad?
Q. Your current home.
A. Just about a year.
Q. Tell us briefly about your education, please.
A. I graduated from Rollins College, which is in Orlando. I have a degree in theater, design tech, and history.
Q. What did you do after college?
A. I got my real estate license.
Q. What do you do for a living now?
A. I'm a real estate agent.
Q. Do you do any other work?
A. I do some administrative work for Insurance Company of the Americas.
Q. Your dad is associated with the Insurance Company of the Americas?
A. Yes.
Q. Do you support yourself?
THE COURT: You have answer in words.
THE WITNESS: Yes. Sorry. I guess it wasn't loud enough.

THE COURT: Thanks.
Q. Do you support yourself?
A. Yes.
Q. Do you receive financial support from your father?
A. No.
Q. Did he pay for your college education?
A. Partially. I got a partial scholarship.
Q. Has your father made any especially large purchases for you since college?
A. My car. Well, that was before college, sorry.
Q. Okay. Anything else?
A. No.
Q. Do you own your home?
A. Yes.
Q. Does your father help you pay for it?
A. No.
Q. Does your father provide you with any additional income beyond what you make to support yourself?
A. No.
Q. Directing your attention to May of 2010, did you go on a vacation at that time?
A. Yes.
Q. Where did you go?
A. Went to Southern California.
Q. And were you on vacation alone or with others?

A. My whole family was with me.
Q. When you say "your family", could you just list who went on the vacation?
A. Yes. My mother, my father, and my brother was in school in San Diego at the time so we collected him there.
Q. I'm going to ask you to speak up just a little bit. My colleague reminds me that it's hard to hear you, so if you can speak up.
A. Sorry.
Q. Please tell us the dates of the vacation.
A. We left Orlando on the 20th of May, and we returned to Orlando on June 4th.
Q. When you say "we left Orlando", did you travel together with others?
A. My parents came with me and returned with me.
Q. You flew out of Orlando together on a plane?
A. Yes.
Q. Where did you fly to?
A. To San Diego.
Q. And that was on the 20th of May?
A. Yes.
Q. Did you fly back from San Diego?
A. Yes.
Q. Did you fly with your parents?
A. Yes.

Q. What date did you fly back?

A. On June 4th.

Q. Where did you go during your vacation?

A. We went up and down the coast of Southern California between San Diego and Los Angeles, and then back down to San Diego.

Q. Okay. Did you observe your father working during the vacation?

A. No.

Q. During your family's vacation in late May and early June of 2010, did you stay at a resort called Pelican Hill?

A. Yes.

Q. Where is Pelican Hill?

A. It's somewhere in Orange County. I think it's near Newport Beach.

Q. How long did you stay there?

A. One night.

Q. One night. Okay. Do you remember which night that was?

A. May 23rd. I think it was -- whatever day the finale of Lost aired.

Q. The finale of what?

A. Of Lost. The TV show Lost.

Q. Did you watch the finale of Lost that day?

A. Yes. That's why I remember.

Q. Are you familiar with an individual named Jason Galanis?

A. Yes.
Q. Did Jason Galanis visit your father while you were staying at the Pelican Hill?
MS. MERMELSTEIN: Objection to leading, your Honor.
THE COURT: I'm going to allow it. Go ahead.
THE WITNESS: Sorry. Can you repeat the question?
Q. I can. Did Jason Galanis visit your father when you were staying at Pelican Hill?
A. Yes.
Q. What happened?
A. My dad went to the main -- the clubhouse -- the restaurant to meet with him briefly.
Q. Were you present for that meeting?
A. No.
Q. But you were told that -- your dad told you he was meeting with Jason?
A. Yeah. I think he asked me to make a --
MS. MERMELSTEIN: Objection, your Honor, to hearsay.
MR. TREMONTE: It's not for the truth, it's what she heard.
THE COURT: It's for the fact it was said. Go ahead. Next question.
Q. What were you doing when your father was meeting with Jason Galanis?
A. My mom and my brother and I were at the gym.

Q. How long were you at the gym?
A. Half an hour to an hour.
Q. By the time you got out of the gym, was your dad done?
A. Yes.
Q. Did you discuss the meeting afterwards with your father?
A. No.
Q. Did you have dinner plans for that night?
A. Yes.
Q. Did you make a reservation someplace?
A. Yes, at the Five Crowns.
Q. All right. Did Mr. Galanis join your father -- your family for dinner?
A. No. My dad had asked me to --
THE COURT: No, no, no. You answered the question. Next question.
MR. TREMONTE: Okay.
Q. As far as you know, Mr. Galanis left the Pelican Hill after he met with your dad?
A. Yes.
MS. MERMELSTEIN: Objection, your Honor.
THE COURT: Yes. That's sustained and stricken. Next question.
Q. Directing your attention to the following year, 2011.
A. Mm-hmm.
Q. Specifically to January, 2011.

A. Mm-hmm.

Q. Did there come a time in January when your father stopped working, to your knowledge?

A. Yes.

Q. And that was in January?

A. Yes, the end of January.

MR. TREMONTE: No further questions, your Honor.

THE COURT: Any cross?

MS. MERMELSTEIN: May I have one moment, your Honor?

THE COURT: Yes.

(Pause)

MS. MERMELSTEIN: Your Honor, may we approach for one moment, please?

THE COURT: Sure.

(Continued on next page)

(At sidebar)

MS. MERMELSTEIN: Your Honor, I objected to the question that was asked about what her father told her about where he was going, and the objection was overruled on the basis that it was not being offered for its truth but being offered presumably for what seemed at the time like it was going to be for some other purpose like, "and as a result of what I was told, I acted in some fashion". There was no real followup that made that statement offered for any permissible purpose other than an attempt to prove that Jason Galanis met with Gary Hirst that day. That her father told her that does not make it admissible, and we move to strike that testimony.

THE COURT: Well, it seems to me you can cross examine and say, "Did you see Jason Galanis?"

MS. MERMELSTEIN: Your Honor, the problem --

THE COURT: Did she testify she saw Jason Galanis?

MR. TREMONTE: No, she didn't.

THE COURT: You can bring that up.

MS. MERMELSTEIN: The point, your Honor, is that she has now testified that her father told her something. I expect the defense is going to argue vigorously that that meeting between Jason Galanis and Gary Hirst took place. Her testimony is not a proper basis from which to make that argument, so asking if she's certain, essentially --

THE COURT: So you don't want to cross examine her, you want me to strike it and you don't want cross examine, is that what you're saying?

MS. MERMELSTEIN: I may have other questions, but I'd like to strike that testimony.

MR. TREMONTE: She testified also that she made a reservation in the anticipation that he would come. It's a statement of future intention. This is an exception to the hearsay rule. It's admissible.

THE COURT: She made a reservation for what?

MS. MERMELSTEIN: But that testimony was not -- that was struck.

MR. TREMONTE: For dinner. Oh, that's what was struck?

THE COURT: Yes, I struck that.

MR. TREMONTE: What she said about her conversation with her father is exactly what your Honor ruled, it's what she heard.

THE COURT: Well, because I thought that it was going to be followed up by this caused her to do something or caused somebody to do something. It didn't.

MR. TREMONTE: But that's what I tried to elicit with the dinner reservation. I can bring it out --

THE COURT: But the objection was sustained on that.

MS. HARRIS: Sorry. Just to jump in, your Honor, because I think watching it from the outside may help. The reason that dinner reservation is relevant, and I think now, given the government's objection, it all ties up, which is that the testimony would have been that she was asked to make a dinner reservation because Jason Galanis was going to be joining her. So that's what she did, she added a person to the dinner reservation as a result of that request. And then, though, he did not end up joining, but her father did leave them to go meet with someone, so that is all admissible.

THE COURT: Then the net of this is you're trying to prove that the meeting happened based on the statements of the father.

MS. HARRIS: And her action of making an additional dinner reservation, your Honor, which is conduct. And, as my colleague points out, who's done diligent research on the various hearsay exceptions, there is a hearsay exception for statement --

MR. BIALE: Statement of future intent, if it's carried out.

MR. TREMONTE: And she did make the dinner reservation.

MS. MERMELSTEIN: I don't think that her making the dinner reservation is relevant in any fashion. Did I interrupt you?

MR. BIALE: No. Sorry. The exception is, a statement of future intention is admissible as a hearsay exception if the future intention is carried out. I think in this case the statement her --

MR. TREMONTE: Of the father.

MR. BIALE: -- him telling her I'm going to go meet with Jason Galanis is admissible if he then carries out that --

MS. HECTOR: There's no proof he carried it out.

MS. MERMELSTEIN: There's no proof he did carry it out.

MR. BIALE: That is -- I think that's why the dinner reservation comes in, because that corroborates that he did carry out the meeting with Jason Galanis.

THE COURT: How is that corroboration?

MR. BIALE: I suppose if he -- that was her understanding. I mean, I think that --

THE COURT: Her understanding what?

MR. BIALE: Of who he was meeting with.

THE COURT: Right.

MS. HARRIS: Because she had to make a dinner reservation to add one more party, because she was told and then he went down to meet with someone.

THE COURT: Well, what's corroborating what? That's what I don't understand. I don't know what's corroborating what.

MR. BIALE: So I think -- my understanding of how the exception works is, a statement of future intent is like a present sense of impression. It's a statement of what's on the mind of the person. And if the person then takes certain actions that corroborate -- that show that that person carried out that action, then it can be admissible. I understand that the fact that she made the dinner reservation is not a corroboration of his intention, so, I mean, I think that's the tension that we're having.

THE COURT: You can ask the question and you can cross examine.

MR. TREMONTE: Your Honor, which question?

THE COURT: The question I struck.

(Continued on next page)

(In open court)

BY MR. TREMONTE:

Q. That evening, the day that you were at the Pelican Hill, did you make a dinner reservation?

THE COURT: No leading. No leading, sir.

MR. TREMONTE: I will not lead, your Honor.

THE COURT: Sustained.

Q. Ms. Hirst, what plans, if any, did you make for that day?

A. Dinner reservations.

Q. Okay. Did you have an understanding that someone would be joining you for dinner?

A. Yes. I was asked to add a member to our party.

MS. MERMELSTEIN: Objection, your Honor.

THE COURT: The question was asked, "Did you have an understanding that another person was going to be joining you for dinner?"

THE WITNESS: Yes.

THE COURT: Thank you.

Q. What was that understanding?

MS. MERMELSTEIN: Objection, hearsay.

THE COURT: No, I think that is -- that's objectionable.

BY MR. TREMONTE:

Q. Did you make a dinner reservation?

A. Yes.

Q. For how many people?

A. Five.

Q. Okay. And who did you anticipate would be joining you?

MS. MERMELSTEIN: Objection.

THE COURT: Sustained.

MR. TREMONTE: May I have a moment, your Honor?

(Pause)

Q. For how many people did you make the dinner reservation?

A. Five.

Q. And how many people in your family?

A. Four.

MR. TREMONTE: No further questions, your Honor.

THE COURT: You may cross examine.

MS. MERMELSTEIN: Thank you, your Honor.

CROSS EXAMINATION

BY MS. MERMELSTEIN:

Q. Good afternoon, Ms. Hirst.

A. Good afternoon.

Q. Just to be clear, on that day of vacation with your family, when you and your mother and your brother went to the gym, you didn't go with your father to wherever he went, right?

A. Correct.

Q. Now, let me back up for just a moment. You're close to your father, right?

A. I am.

Q. And he's a very well-educated man, right?
A. Yes.
Q. He has a college degree, right?
A. Yes.
Q. He majored in computer science, right?
A. Yes.
MR. TREMONTE: Objection, your Honor.
THE COURT: Overruled.
Q. And he has a law degree?
A. Yes.
Q. And a medical degree?
A. Yes.
Q. And he's a sophisticated business person, right?
A. I think so.
Q. Now, your dad was involved in the course of his career in a number of different business endeavors, right?
MR. TREMONTE: Objection, your Honor, beyond the scope.
THE COURT: Sustained.
Q. You have met Jason Galanis, right?
A. I have.
Q. And Jason Galanis is very close to your dad, right?
A. I don't know.
MR. TREMONTE: Objection.
THE COURT: Overruled.

Q. Jason Galanis considered your dad like a father, right?
A. I don't know.
Q. You love your dad, right?
A. I do.
Q. And you don't want him to go to jail, right?
A. Yes.
MS. MERMELSTEIN: Nothing further, your Honor.
THE COURT: Any redirect?
MR. TREMONTE: Two questions, your Honor.
REDIRECT EXAMINATION
BY MR. TREMONTE:
Q. You just testified that you met Mr. Galanis personally?
A. Correct.
Q. Did you meet him personally during that vacation?
A. Yes, in Los Angeles.
Q. In Los Angeles? Was that before or after you and your family were at the Pelican Hill?
A. After.
MR. TREMONTE: No further questions.
THE COURT: You may step down. Thank you very much.
THE WITNESS: Thank you, your Honor.
THE COURT: Mr. Tremonte, any further witnesses or evidence?
MR. TREMONTE: No, your Honor. Defense rests.
THE COURT: Any rebuttal case from the government?

MS. HECTOR: Your Honor, we may have a brief rebuttal case, but we need to confer.

THE COURT: Well, confer.

As I said, ladies and gentlemen, after my final instructions, then you will have the case and you'll then be able to discuss the case among yourselves.

MS. HECTOR: Your Honor, given some issues --

THE COURT: No, no. Yes or no.

MS. HECTOR: No, your Honor.

THE COURT: Thank you.

That completes the evidentiary presentation in the case. I will see you all -- if you can get here a little bit early so we have a good, fresh start, and we'll get going on Monday morning. Have a very pleasant weekend. See you then.

(Continued on next page)

(Jury not present)

THE COURT: I'll see everybody tomorrow afternoon at 3:30 to discuss anything final about the jury instructions. I don't anticipate it's going to be very long. It may be five or ten minutes, but we'll get that done.

The government's preparing a redacted version of the indictment?

MR. BLAIS: Yes. In fact, we've provided that redacted version, as well as a proposed verdict form, to defense counsel, and we're waiting for any comments.

THE COURT: That's excellent.

Anything else outstanding? Okay. See you tomorrow at 3:30. Thank you.

I will require a copy of that binder. If the court reporter needs this one then I will need -- you may need this on the email reread, so I will need one. Thank you.

(Adjourned to September 23rd, 2016 at 3:30 p.m.)

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